Supreme Court, U.S.
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NO.

IN THE

Supreme Court of the United States

DAVID EILENDER,

Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES OF THE STATE OF MICHIGAN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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Dated November 27, 2009

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QUESTIONS PRESENTED

This case questions the constitutionality of Michigan's procedures for terminating parental rights Michigan's termination hearing does require "clear and convincing evidence" to support a ground for termination, in accordance with this Court's decision in *Santosky v. Kramer*, 455 U.S 745 (1981) At the same time, however, Michigan exempts the termination hearing from its usual rules of evidence and permits the final termination decision to be based on hearsay and otherwise inadmissible evidence MI Rules MCR 3.973(E) The petitioner has had his parental rights terminated in such a hearing Moreover, he has, over his objection, been tried jointly with his ex-wife, increasing the hearsay and also allowing in much other evidence that was irrelevant but prejudicial to him.

Two questions are thereby presented

1 Can a State Refuse to Apply the Fourteenth Amendment's Right to Confrontation to Its Child Protection Proceedings to Terminate Parental Rights, Even When Only Adult Witnesses Are Involved?

2 Did the Family Court Deprive the Petitioner of Due Process When It Refused to Sever the Petitioner's Trial for Termination of His Parental Rights from That of His Ex-Wife who had, among other things, been Convicted for Perjured Testimony Against Him?

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OPINIONS BELOW

The opinion of the circuit court of Oakland County, Michigan, Family Division finding statutory grounds to terminate the rights of both David Eilender and his former wife, Betty Colleen Eilender (App 1a) is unreported The decision of the same court finding termination to be in the children's best interests is unreported. (App 104a). The decision of the Michigan Court of Appeals affirming the termination of parental rights as to both parents is unreported. (App 129a). The order of the Michigan Supreme Court denying discretionary review of the decision of the court of appeals is reported at 771 N W.2d 725 (Mich 2009)

JURISDICTION

The Michigan Court of Appeals decision from which review is sought was entered on June 30, 2009 (App.129a). A timely petition to the Michigan Supreme Court for discretionary review was denied on September 2, 2009. (App 146a) This Court has jurisdiction pursuant to 28 U.S.C § 1257(a) over this petition, which is being filed within the time permitted by 28 U S C § 2101(c) and Sup. Ct R 13 1

STATUTES INVOLVED

The Michigan statutes and rules involved in this case, MCLS § 712A 2(b) (2009); MCLS § 712A 19 (2009), MI Rules MCR 3.943; MI Rules MCR 3.945, MI Rules MCR 3.965; MI Rules MCR 3.971; MI Rules MCR 3 973; MI Rules MCR 3 974; MI Rules

MCR 3 973, MI Rules MCR 3.977, are reprinted in their entirety in Appendix F (App 147a-196a).

STATEMENT OF THE CASE

Dr. David Eilender is an oncologist practicing in the State of Michigan He is also the father of five children, Marvin, Charlie, Hannah, Lewis and Lillian, currently ages 5-15 years (App 2a-3a) At the behest of the Department of Human Services, Dr Eilender's parental rights have been terminated in family court, the holding has been affirmed by the Michigan Court of Appeals, and the Michigan Supreme Court has declined review The principal reasons given for the family court ruling were Dr. Eilender's Obsessive Compulsive Disorder (hereinafter "OCD"), his failure consistently to acknowledge it, and his tendency to blame others rather than take personal responsibility for family problems. (App.9a, 91a-98a) The termination grounds were MCL §§ 712A 19(b)(c)(i) ("The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age "), 712A 19(b)(3)(g) ("The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age "); and 712A 19(b)(3)(j) ("There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.") (App.101a)

In Michigan a child protection case moves from a petition for intervention, to a first trial, which

is termed an "adjudication," to "disposition," which can last for a long time and can include many hearings and placements of the children but which ultimately results in family reunification or, if necessary, termination. As Michigan has set up its procedure, the adjudication is in many ways the main event The issue in that trial is whether the Department of Human Services [hereinafter DHS] can prove at least one of the grounds for termination of parental rights that it alleges in its petition. If that showing is made, the child(ren) "come within the jurisdiction of" the family court, leaving the court and DHS, instead of the parents, in control of the placement of the children and provision for their care. M.C L § 712A 2(b) The standard of proof DHS must meet to place the children in the family court's jurisdiction is a preponderance of the evidence The rules of evidence apply, and the evidence that supports the decision must all be legally admissible Jury trial is available at this stage, as is a full right to cross examine and confront witnesses.

After the adjudication, however, the usual rules of evidence do not apply (except with respect to privileges) M C R. 3.973(E)(1) "All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value." M C R. 3.973(E)(2). The state relaxes its evidence standards in this way only with respect to grounds of termination that the state has already proved in the (sometimes much earlier) adjudication. *In re C R* , 646 N.W.2d 506, 514-15 (Mich.Ct App 2001), *In re Gilliam*, 613 N W.2d 748 (Mich Ct.App 2000); *In re Snyder*, 566 N W 2d 18 (Mich Ct App 1997). Thus the adjudication, although it operates under a standard of proof of "preponderance of the evidence" operates to take away rights to confront and cross examine

witnesses at the termination, which *Santosky v Kramer* has required clear and convincing evidence to sustain.

In addition, the adjudication is often waived, as it was in this case, because in return for a plea of no contest the parent is offered immediate reunification with his children—the ability to take his children home. (App 4a-5a). In cases like Dr. Eilender's, then, no ground for termination was ever proved by legally admissible evidence, even by a preponderance of the evidence. Instead the prospect of immediately reuniting as a family enticed both parents to waive the adjudication and not to contest the charges that DHS had earlier leveled against them.

INITIAL CONTACT, REMOVAL OF CHILDREN, AND RETURN OF THE CHILDREN TO THE PARENTS

Dr Eilender's children came to the attention of DHS when the children's mother accidentally left the oldest child, then ten years old, at the Salvation Army. (App 3a) Dr Eilender was still married to and living with his wife and children at the time. An employee of DHS and a policeman came to the home to return the child and found it in "deplorable condition," with the result that all the children were immediately taken into protective custody (App 3a) They remained in protective custody for more than two months, while the father spent a great deal of time, effort, and money in improving the home to prepare it for the children's return The work involved endless hours of clearing, cleaning, and repairing When social workers saw it in July, they said he had performed "miracles" and that the

changes that had occurred were "remarkable." (App 4a). They recommended that the children be returned to live there, upon the parents' signing a no contest order to the charges against them that otherwise would be tried in an "adjudication." The no contest order, like a finding against parents at an adjudication, left the children "under the jurisdiction of" DHS until further services[1] were provided and further decisions were made. On July 29, 2005, both parents waived their rights to an adjudication, and all the children returned home to both parents. (App.5a).

SEPARATION OF PARENTS AND LATER REMOVAL OF CHILDREN

Just over two months later, however, Dr. Eilender moved out of the family home because of problems between him and his wife (App 14a). He maintained regular visits with all of the children outside the home. Less than five months later, on February 23, 2006, the children were removed from the home when the mother proved incapable of taking care of them, made a suicide attempt, and was hospitalized. (App 28a, 33a, 35a). The mother later explained that she had purposely overdosed on her medication, knowing the social worker was coming, in order to have the children taken into protective custody "for their own good " (App.34a)

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[1] The family received services through Easter Seals, Families First, Wrap Around Services, other in home services, and family reunification services The father further received individual therapy through Oakland Family Services, and anger management classes through the CHOICES program (App 24a)

During the few months that the mother alone had cared for the children there had been eleven reports to child services (App.27a), and the mother had to call the police on more than one occasion just to get the children off to school. (App.30a)

Since the second removal, all of the children have remained in foster placements. In the meantime, divorce proceedings were commenced in March, 2006 Because the mother was hospitalized, Dr. Eilender was permitted to return to the family home. He also cooperated with various parenting and anger management classes that the family court prescribed for him as a means to earn reunification with his children. (App.36a)

In April, 2006 the family began court-ordered therapy with Dr. Tracy Stulberg, whose testimony was ultimately central to the trial court's findings against Dr Eilender. Doctors Stulberg and Eilender quickly developed a hostile relationship. Dr. Eilender did not believe in or cooperate with Dr. Stulberg's methods, and Dr. Stulberg faulted Dr Eilender for not being willing to take responsibility for his role in the family problems The hostility was exacerbated in June when Dr Eilender filed a HIPPA complaint against the therapist. (App.59a) By October 2006, Dr Stulberg had convinced the court that the children's reunification with Dr. Eilender would not be possible and that he could not improve, largely because he did not take responsibility for his own actions. (App 48a)

TERMINATION PROCEEDINGS

In January 2007, the Department commenced proceedings to terminate the rights of both parents The grounds for termination were the same as those

to which they had pleaded no contest eighteen months earlier, so Michigan's rules of evidence did not apply to protect either of them during the hearing On March 2, 2007, Dr Eilender sought to withdraw his no contest plea of July, 2005, but his motion was denied (App.51a) Still, Dr Eilender continued to protest the voluntariness of his waiver of the initial adjudication, the central event in Michigan's child protection procedure, at which he would have had the right to a jury trial, the right to full cross examination, and the right to a decision based upon legally admissible evidence, albeit one supported by only a preponderance of the evidence

On August 27, 2007, Dr Eilender sought to sever his termination of rights trial from that of his ex-wife At this point, he and his wife were in the midst of a divorce and were on very hostile terms. Dr. Eilender's ex-wife openly admitted that she intended to prevent Dr. Eilender from maintaining his parental rights. She had been convicted both of perjury and of filing false police reports in attempts to accomplish that goal, offenses for which she had served time in jail. (App.74a, 108a) Moreover, maintaining a joint trial meant that the judge making the determination with respect to Dr. Eilender would be exposed to much damaging evidence that was relevant only to his ex-wife. Nonetheless, the motion was denied (App 132a)

During the proceedings, Dr. Eilender repeatedly sought to protect the integrity of the evidence against him and to assert his rights to confront his accusers. In particular, he sought to cross-examine for bias a principal witness against him, Dr. Stulberg, the psychologist assigned to the family for therapy When Dr. Eilender's attorney attempted to cross examine Dr. Stulberg concerning any bias she might have against his client because of

the HIPPA complaint filed against her, the trial judge immediately cut off any questioning He declined to give a ground for his ruling, and he threatened sanctions against the attorney for seeking to note an objection for the record. The judge never explained his refusal to allow cross-examination, but the court of appeals later justified this ruling of the trial court by saying that no right to confrontation was applicable in child protection proceedings in Michigan (App.133a) That court also justified the trial court's ruling on the ground that the trial judge already knew about the HIPPA complaint. (App.134a) Even so, the judge was not aware of the animosity against Dr Eilender that his counsel had intended to expose on cross examination and to reveal as the basis for her damaging testimony against the petitioner

Dr Stulberg's testimony, not subjected to the testing of cross-examination, was both extremely damaging to Dr. Eilender and persuasive to the judge (App 50a) Less than six months into family therapy, Dr Stulberg testified that the father had "gone about as far as he is going to go in being able to deal with the issues that brought this matter to the Court," because his refusal to take responsibility precluded him from making progress (App 48a) The judge accepted the "opinion of Dr Stulberg that without father's acknowledgment of how his conduct contributed to or otherwise caused the children to come into care, the chance for recidivism remains great." (App 58a) This finding was essential to the court's rejection of Dr Eilender as a parent. The judge repeatedly indicated that Dr Stulberg was a very influential witness In his opinion he found neither of the parents "to be particularly credible In juxtaposition, the Court found the testimony of Dr Gonzales, Sydney Smith, Jinelle Manchester, Ms.

McCauley, Ms. Romeo-Perez, Marianne Barley, Mr MacIntosh, Michael Miner and (particularly) Dr Stulberg to be eminently more believable, persuasive, candid and credible." (App 50a).

As a result of the termination hearing, on May 8, 2008, the court ruled that there was clear and convincing proof of at least one ground for termination, as there had been at the time of adjudication, and that it was therefore mandatory under Michigan law to terminate both parents' rights, unless that disposition was shown not to be in children's best interests. (App 101a). In a separate best interests hearing on August 29, 2008, the same judge ruled that the interests of the children favored termination. (App 121a-122a). The order terminating parental rights was issued on September 15, 2008 (App.124a)

APPELLATE PROCEEDINGS

Through his attorney, Dr Eilender filed a timely appeal in the Michigan Court of Appeals, objecting, inter alia, to the involuntariness of his July 2005 waiver of rights, the inability to cross examine Dr Stulberg for bias, and the joinder of his trial with that of his ex-wife When the court affirmed the ruling of the trial court, Dr Eilender sought timely review of the same issues in the Supreme Court of Michigan Review was denied on September 2, 2009. (App.146a). Review in the Michigan courts pertained to both parents, but this petition concerns only the termination of Dr Eilender's parental rights

REASONS FOR GRANTING THE WRIT

This Court should grant review in this case because a Michigan state court has decided an important question of federal law in a way that conflicts with this Court's developing precedents governing procedures that Due Process requires at hearings to terminate parental rights. This Court, in a series of cases, *M.L.B v S L J*, 519 U S. 102, 116 (1996) (collecting cases), has recognized that heightened procedural requirements are necessary in parental termination hearings. Nonetheless Michigan has adopted a more relaxed evidentiary standard in termination proceedings than it allows in standard civil trials Exacerbating this Due Process violation, the Michigan court also denied severance of the parents' hearing, inevitably exposing Dr. Eilender to damaging hearsay evidence that was relevant only to his ex-wife This Court should avail itself of the opportunity this case presents to clarify the procedural requirements that are constitutionally necessary before a court may deprive a parent of all rights to have any contact with his children

I. This Court Should Grant Review To Clarify That In A Parental Termination Proceeding, The Admission Of Hearsay Evidence And The Denial Of Confrontation Rights Is A Violation Of The Due Process Clause Of The Fourteenth Amendment.

Santosky v Kramer's requirement of "clear and convincing" proof for termination of parental rights suggests that, as well as being convincing, the

evidence must also be legally admissible and must be presented at a hearing in which the parent whose rights are in question has the opportunity to confront and cross-examine his accusers

"The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court" *Troxel v Granville*, 530 U S 57, 65 (2000) A final order of termination permanently and irrevocably extinguishes all legal obligations and rights a natural parent has with respect to the children who are subject to the order It eradicates any rights a parent may have to be consulted about matters concerning the child's welfare, to visit the child, to have any contact with the child, or to be informed of the child's whereabouts. Because the sanction of forever losing one's child is so severe, this Court has recognized that the Constitution mandates strict procedural safeguards in termination cases In *Lassiter v Dept. of Soc. Servs* , 452 U S. 18 (1981) the Court found that Due Process sometimes requires the appointment of counsel for parents facing termination of their parental rights. *Id* at 31-32 The Court next found that Due Process requires a heightened standard of proof in termination proceedings Because a mere preponderance standard offered constitutionally deficient protection to the parent-child relationship, a "clear and convincing" standard was mandated by Due Process *Santosky v Kramer*, 455 U.S 745, 758 (1982). Most recently, the Court has recognized that indigent parents must be given the opportunity to exercise an appeal as of right arising from termination judgments *M L.B v S L J* , 519 U S 102, 128 (1996).

The Michigan court's statement that there is "no right to confrontation in child protection proceedings," (App 133a) accurately describes Michigan's statutory termination procedures Despite objections made in this and other cases, the Michigan courts have left untouched Michigan's basic rules that permit hearsay evidence to be freely introduced into the proceedings and that deny parents Due Process rights to confront their accusers These procedures are in severe tension with this Court's statement that "[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Santosky v. Kramer*, 455 U S 745, 753-754 (1982).

Under MI Rule MCR 3 971, Michigan does require that the evidence used in an "adjudication"—the proceeding under which a child may be placed under the court's jurisdiction—be legally admissible However, once a child comes under the court's jurisdiction, the court may examine "[a]ll relevant and material evidence. to the extent of its probative value" to terminate permanently parental rights. It may do so as long as the grounds for termination are the same as the grounds used to place the child under the court's jurisdiction, whether that was done at an adjudication or whether adjudication was waived, as in this case, in order to accomplish immediate return of the children to the family home Because of these procedures, the grounds for termination of Dr Eilender's parenthood were never proved by legally admissible evidence

These procedures are particularly problematic because this Court has specifically held that parental rights may only be terminated if there is "clear and convincing" evidence to support that termination *Santosky,* 455 U S at 748 Michigan

seeks to adhere only to the letter of the holding, while relaxing its evidentiary requirements to violate the spirit of the Court's ruling Much of the "clear and convincing" evidence used to terminate Dr Eilender's rights would have been legally inadmissible in a civil trial, because Dr Eilender was denied the opportunity for confrontation. And even if Dr Eilender had not waived his right to the initial adjudication, hearsay evidence could still have been critical in meeting the "clear and convincing" standard At the initial adjudication, the state need only establish its case by a "preponderance of the evidence." Thus, the termination proceeding—in which hearsay is permitted -- is the only one in which the *Santosky* "clear and convincing" evidence standard applies.

One Michigan judge, noticing the contradiction in the state's child protection procedures, has argued that rights to confrontation should apply at termination, even to grounds earlier established by a preponderance of the evidence: "It seems inconsistent for the statute to require that petitioner show by clear and convincing evidence that termination is justified, while the rules allow the use of legally inadmissible and, thus, potentially unreliable evidence to satisfy this standard. The evidentiary rules should not undermine the procedural protections afforded by the statute['s and the U S Constitution's requirement of clear and convincing evidence] " *In re Gilliam*, 613 N W 2d 748, 752 (2000)(Bandstra, C J , concurring) His admonition was not accepted by his brethren.

This Court has long recognized that the admission of hearsay evidence represents a substantial threat to the integrity of fact-finding in judicial proceedings "[P]robably no one, certainly no one experienced in the trial of lawsuits, would deny

the value of cross-examination in exposing falsehood and bringing out the truth." *Pointer v. Texas*, 380 U S. 400, 404 (1965) As explained in *Williamson v. United States*, the hearsay rule "is premised on the theory that out of court statements are subject to particular hazards The declarant might be lying, he might have misperceived the events which he relates, he might have faulty memory, his words might be misunderstood or taken out of context by the listener " 512 U.S. 594, 598 (1994). For this reason, "[t]here are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." *Pointer v. Texas*, 380 U.S. 400, 405 (1965). As this Court has said in another context, "Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty " *Crawford v Washington*, 541 U.S. 36, 62, (2004)

Michigan's decision to dispense with these rights in a proceeding that deprives parents of the ability even to have contact with their biological children represents an unconstitutional denial of the Due Process rights guaranteed by the Fourteenth Amendment

Because this problem is embedded in Michigan's child protection statutes and rules, it affects many parents in that state whose parenting is being questioned Nor is the problem unique to Michigan Other states diverge widely with respect to the evidentiary requirements at proceedings to terminate parental rights Many states, recognizing the importance of the rights at stake in such

proceedings, mandate that evidence must be admissible under the civil rules, making hearsay unacceptable. *See, e g., Ex parte State Dep't of Human Res* , 890 So.2d 114, 117 (Ala. 2004) (holding that "hearsay evidence is not considered competent evidence in an adjudicatory proceeding"), *In re J G* , 699 N.E.2d 167, 175-76 (Ill.1998) (holding that the civil rules of evidence must apply in termination hearings). Some states, however, adopt an approach similar to that of Michigan, relaxing evidentiary requirements and denying parents' confrontation rights. *See, e g., In re A J* , 553 N W.2d 909, 916 (Iowa Ct. App 1996) (finding that hearsay evidence may be admitted as long as it is relevant and not unduly prejudicial) The state of Nebraska's approach is illustrative of the confusion surrounding the issue. The Nebraska Supreme Court found that the rules of evidence do not apply in termination proceedings, but it simultaneously held, citing *Santosky*, that constitutional Due Process rights dictate that hearsay evidence may not be admitted when it interferes with a parent's right of cross-examination. *See In re Interest of J S* , 417 N.W 2d 147, 155-157 (Neb 1987).

Because of the importance of the rights involved to many persons, and because of the confusion that reigns in many states concerning acceptable procedures in parental termination proceedings, this Court should take the opportunity to clarify what rules Due Process requires before a court irrevocably terminates all parental rights to be with their children

II. Granting Review Would Also Allow This Court To Emphasize That Due Process Requires Severance Of Termination Proceedings When, As In This Case, The Parents Are Adversaries And A Denial of Severance Will Unfairly Expose One Parent To Damaging Evidence Relevant Only To The Fitness Of The Other.

The trial judge exacerbated the unreliability of the fact-finding process at the termination hearing when he refused to separate the trial of Dr Eilender from that of his former wife Without a severance, both the quality and the quantity of the hearsay evidence were such that a reliable fact-finding process could not take place Granting review of this case will provide the Court with an opportunity to elucidate the standard for severance in termination proceedings

The issue of severing trials of co-defendants is raised most frequently, although not exclusively, in criminal prosecutions. A judge may deny a motion for severance unless the petitioner shows a substantial risk of prejudice and an inability to receive a fair trial if severance is not granted. *See, e g , Zafiro v. United States,* 506 U S 534, 539 (1993) ("Such a risk might occur when evidence that the jury should not consider against a defendant and that would not be admissible if a defendant were tried alone is admitted against a codefendant ") This case rises to that very strict standard.

In moving for severance, Dr. Eilender observed that a number of witnesses appearing in his ex-wife's case were both irrelevant and potentially prejudicial to Dr Eilender, even though they might be relevant to termination for his former spouse TR 8/27/2007, p 19. He also was barraged

by even more hearsay than Michigan's rules would have allowed if he had been able to have his own proceeding, unsavory and distracting material that had nothing to do with Dr Eilender flooded the proceeding in which he was to lose all rights to care for or to have contact with any of his children

The trial court did not manage to differentiate between the two cases and which witness was for whom. It often cited testimony offered in the mother's case, e.g , Michael Miner, Exhibit 1, p 14, against Dr. Eilender in its opinions Given the weight and severity of evidence introduced against the mother, there was a risk to Dr. Eilender of the transference of guilt comparable to that we see in criminal conspiracy cases. *Zafiro*, 506 U.S. at 539, *Cf Kotteakos v United States*, 328 U.S. 750, 776 (1946) But it was highly inappropriate on the facts of this case to treat Dr Eilender and his ex-wife as if they were partners, instead of granting separate trials to evaluate their substantially different prospects for reuniting with their children. Dr. Eilender and his ex-wife had very different problems as parents. By the time of the termination, they were offering separate homes, they were divorced, and they needed to be evaluated separately before being forever deprived of their children.

Indeed, when Dr Eilender moved for separate trials, he noted, through his counsel, that both the goals and defenses of the co-defendants were antagonistic Dr. Eilender was very anxious to make a home for his children and believed he could do so. He had worked hard for several years with that goal in mind. Dr. Eilender was attempting to show the court that he is a fit parent and that the children could be returned to his home. He also claimed that his ex-wife was primarily to blame for the problems they had had in their mutual home, during a period

when both were there and before the children were removed.

These goals and defenses were undermined by his ex-wife's repeated emphasis on her position that Dr Eilender's rights should be terminated Prior to the termination trial, the ex-wife had been convicted of perjury for having fabricated false charges against Dr Eilender She also had been convicted of falsely filing a police report against Dr Eilender. She served jail time on these charges. The ex-wife explained her crimes as efforts to keep Dr Eilender from having parenting time with the children. (App.74a, 108a)

In fact, Dr. Eilender's ex-wife had gone so far as to whisper to the children during Dr Stulberg's family therapy sessions to tell the doctor that Dr. Eilender abused them.(App73a) She told one of the children, Lewis, that Dr. Eilender had knocked out her wisdom teeth, when he had not. She also told Lewis that Dr Eilender had burned her and attempted to put her in the oven and that on another occasion he had put Lewis in the oven She told him not to tell anyone because she would get in trouble Lewis was 7 years old at the time (App 75a-76a) The stories were total fabrications

Given this history, it is unsurprising that at times during the proceedings, the termination of Dr Eilender's rights seemed to be his ex-wife's primary goal; although she did not want to lose all contact with her children, she was often uncertain that she would be able to care for them Dr. Eilender was therefore forced to defend not just across the aisle, but across his own counsel's table

Thus, Dr. Eilender's motion for separation demonstrated the substantial risk of prejudice required to make severance mandatory As a result of the motion's denial, not only was Dr Eilender

tainted by an even larger mountain of suspect evidence than Michigan rules would have permitted in an independent termination trial, but he was also treated as the partner of a co-defendant whose object was to undermine his defense This Court should grant review to clarify that denial of severance in such extreme cases constitutes a deprivation of Due Process rights

CONCLUSION

Michigan's procedures for termination of parental rights blatantly conflict with the requirements of procedural Due Process. Further, they directly undermine this Court's opinion in *Santosky v Kramer* This Court should grant the petition for a writ of certiorari in order to clarify for all states and all parents facing termination hearings what procedural protections Due Process mandates.

Respectfully submitted,

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November 27, 2009

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Opinion and Order of State of Michigan in the Circuit Court for the County of Oakland Family Division 1a

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STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

IN THE MATTER OF MARVIN EILENDER, CHARLES HENRY NOAH EILENDER, HANNAH EILEEN ROSE EILENDER, LEWIS ABRAHAM JOSEPH EILENDER, and LILLIAN SARAH CLARE EILENDER, Minors

2005-707874-NA
Hon. Leo Bowman
_____/

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OPINION AND ORDER

This matter is before the Court on Co-Petition of the Oakland County Prosecutor and the Department of Human Services requesting termination of the parental rights of respondent father, DAVID STUART EILENDER, and respondent mother, BETTY COLLEEN EILENDER.

Respondents, DAVID STUART EILENDER (hereinafter "father") and BETTY COLLEEN EILENDER (hereinafter "mother"), are the biological parents of five minor Eilender children, who are: MARVIN EILENDER (d/o/b June 19, 1994), CHARLES HENRY NOAH EILENDER (d/o/b December 29, 1995), HANNAH EILEEN ROSE EILENDER (d/o/b June 13, 1997), LEWIS ABRAHAM JOSEPH EILENDER (d/o/b 12/17/99),

and LILLIAN SARAH CLARE EILENDER (d/o/b November 16, 2004)

Mother is also the parent of three additional adult children from her prior marriage These children are not the subjects of these proceedings, however, for identification purposes they are MARK MINER (currently age 24), MICHAEL MINER (currently age 21) and EVA MINER (currently age 20).

BACKGROUND

The minor Eilender children came into protective care on or about May 20, 2005. This initially came about because mother left one of the children (Marvin who was then age 10) alone at the Salvation Army. As a result of this incident, a CPS worker and the police went to the family residence on May 20, 2005 and found the same to be in "deplorable condition" At that time the children were taken into protective custody and, on May 26, 2005, a Petition for child protective proceedings was authorized in this action

Included among the allegations contained in the initial petition were allegations regarding the unhealthy condition of the family's residence, as well as references to multiple prior domestic violence referrals to CPS (which included allegations of domestic violence by respondent father against respondent mother) and a 2000 OUIL conviction against respondent mother, during which offence she drove with at least one of the minor children in the car

Michael Miner testified that when the children were taken into custody the condition of the home was really bad One couldn't walk in the front door of the home and there was laundry everywhere He said you could find anything in any room of the home, such as toys, food and laundry. At that point,

the washer and dryer had not been in operating condition since at least 2003 and the toilet downstairs hadn't worked for over a year He described the walls as being covered with food and drawings by the kids. The carpets were black and dirty dishes were stacked high in the kitchen. There were holes in the ceiling and it was no surprise to him that the children acted like animals and lacked respect when living in such an environment.

Michael Miner further testified that there were rooms which only respondent father was permitted to have access to. These included the fifth bedroom, the study, areas of the basement, the attic and a tool shed He indicated that father would lock the freezer, study and fifth bedroom. In addition to locking the study, at times father would also tie a rope on the study door. Michael Miner candidly indicated that the environmental neglect of the family residence was attributable to both father and mother and that neither could point fingers at the other regarding this issue.

From May 20, 2005 until July 29, 2005, the children remained in protective custody. During this period the family made considerable progress at repairing the home, including, but not limited to repair of some of the plumbing issues, removal of filth from the floors, removal of clutter from various areas of the home (which filled multiple dumpsters), and other necessary repairs. Although the total removal of clutter was not yet effectuated, promised upon the remarkable progress that was made by the family between May 20, 2005 and July 29, 2005, the children were returned to both parents' care Michael Miner testified that he helped his mother clean the home, as best as he could, and that the progress that was made during this period was nothing short of a "miracle".

On July 29, 2005, the parents plead no contest to the allegations contained in the initial petition and the Court took temporary jurisdiction over the minor Eilender children pursuant to MCL 712A2(b)(1)&(b)(2).

On July 29, 2005, Referee Hand advised the parents that "just because the home conditions have been alleviated, does not mean that the underlying problems are taken care of." At that time, a referral was made for family reunification services, as well as for the mother, father and most of the minor Eilender children to be evaluated by the Oakland County psychological Clinic.

At or around this time, the first Parent Agency Agreement (PAA) for this family was formulated [1] In that PAA, the following goals and objectives wore established for respondents

For mother:

Participate in a psychological evaluation through the Court;

- Follow all recommendations of the psychologist;
- Answer all questions from psychologist to the best of her ability,

Complete parenting class;

- Attend every class;
- Actively participate in class,
- Provide documentation of completion to the worker assigned to her case;
- The intended outcome of mother's participation in these classes was to permit mother to gain the proper parenting skills to help assist

[1] People's Exhibit 1

her in parenting her children in an appropriate parent/child role

- Maintain suitable housing;
  - Ensure that all utilities are working,
  - Make sure that the home is clean and appropriate at all times,
- Participate in family counseling;
  - Attend each session;
  - Openly discuss any family dynamics with the therapist;
  - Follow recommendations of the therapist,
  - The intended outcome of mother's participation in this therapy was for her to be able to have a home environment safe and appropriate for the kids.

For father:

- Participate in a psychological evaluation through the Court,
  - Follow all recommendations of the psychologist;
  - Answer all questions from psychologist to the best of his ability;
- Complete parenting class,
  - Attend every class,
  - Actively participate in class,
  - Provide documentation of completion to the worker assigned to his case,
  - The intended outcome of father's participation in these classes was to permit father to gain the proper parenting skills to help assist him in parenting his children in an appropriate parent/child role;

- Maintain suitable housing,
- Ensure that all utilities are working;
- Make sure that the home is clean and appropriate at all times;
- Maintain a legal source of income.

- Participate in family counseling;
  - Attend each session;
  - Openly discuss any family dynamics with the therapist;
  - Follow recommendations of the therapist;
  - The intended outcome of mother's participation in this therapy was for her to be able to have a home environment safe and appropriate for the kids.

This PAA was adopted by Order of the Court on or about October 18, 2005

Respondents' respective psychological evaluations, conducted pursuant to the July, 2005 order of the court and PAA, reflected that.

- As to mother, she was found to have had a slowing of mental and physical processes, which was partially attributable to depression, but also suggestive of a dependent personality disorder and a generalized anxiety disorder She was found to be masochistic, have a marked dependency on others, and anxious to seek reassurance Her history revealed prior thoughts of suicide (in order to get attention), a long term eating disorder (which dated back to when she was 12), history of being involved in abusive and

controlling relationships, identity disturbances and low self esteem. She was also likely to convert stress into physical complaints, and there was evidence that she might engage in some antisocial and criminal behavior, as well as have an inability to internalize societal rules.

As to father, he was found to be lacking in insight into himself or others, likely suffering from Obsessive/Compulsive personality Disorder with Narcissistic traits, and have a tendency to show perfectionism that could interfere with task completion He was found to be a person who could be easily upset and that deviations from his routine might produce anxiety. It was also indicated that he was unable to discard worn-out or worthless objects, even when they have no sentimental or monetary value, and during the course of the interview admitted that he was still storing "two storage garages" worth of items instead of throwing them out, even after his hoarding problems had brought his children into care [2] It was also felt that his underlying psychological issues

[2] The Court notes that during the course of father's bankruptcy proceedings, it was discovered that father continued to maintain at least one such storage locker (which was 10'x30' in size), paying a fee of $340/month in order to do so This evidences father's inability to balance his need to keep worthless things with his need to provide financial support to his family During father's testimony, he disclosed that he still maintains two storage units and that has continued to store his deceased father's suits at the home for a considerable period of time

were consistent with a person who would be reluctant to delegate tasks or to work with others unless they submitted to exactly his way of doing things, and to be miserly in spending toward themselves and others, as well as being rigid and stubborn [3]

- During the psychological evaluations, the children indicated that father was quite a collector of items on EBay and that their mother would buy things from the Salvation Army on a regular basis, Mr. MacIntosh, of the Oakland County Psychological Clinic felt it was consistent with father's profile that he would have difficulty in discarding items and also that task completion could be difficult for him as he gets side-tracked with details that would cause him to lose track of the main thrust of the task
- Mr. MacIntosh remarked, in his report, that

> "[i]t is remarkable that these two individuals found each other and married. Ms Eilender's sub-

[3] Interestingly, Dr Miller noted that father had "rigid ego defenses", someone who might have difficulty "admitting to psychological conflicts and that he may find it difficult to accept psychological interpretations of his behavior and some of his rigidly held attitudes", was a self reported "collector" and someone who likes to participate in "do-it—yourself projects" Again, these "findings" are consistent with time diagnosis of both Mr MacIntosh and Dr Gonzales (father's self-selected treating psychiatrist) of a person who suffers from an obsessive compulsive disorder

missive personality and low self-esteem and her strong dependence upon others would lead her to be one of the only personality styles that would tolerate someone who is obsessive/ compulsive to the degree that Dr Eilender is. There is an old saying that 'you can only be walked all over if you are willing to be a doormat,' and that appears to be the case with these two individuals It is as if their pathology was made for one another Dr. Eilender's personality is that of a controlling bully, and Mrs. Eilender's profile is that of a submissive martyr. This disturbed pattern of behavior is likely to continue unless both of these individuals find serious long-term counseling, and in the case of Ms Eilendor, psychiatric intervention with psychotropic medications for her anxiety and dysthymia "

- Also contained within Mr MacIntosh's report, are references to acknowledgments made by each of the respondents that the home began to fall apart when mother's three older children moved

away to go to college, and that those older children had primarily been the source of stability for this family unit.[4]

The recommendations contained in the September 26, 2006 psychological evaluation, which where then adopted by the Court, included the following

- That both Dr. Eilender and Ms. Eilender benefit from individual counseling to address issues regarding their marriage, as well as individual issues concerning aspects of their personality that make it difficult for them to be a healthy couple,
- That both individuals benefit from family counseling to learn how to work together as a couple in order to raise their children, all of which apparently have potential,
- That continued case management be involved with this family for a period of time in order to be sure that a healthy system of accomplishing tasks and of daily living be set up and functioning in order for this family to continue to maintain a home in an appropriate manner
- That Ms Eilender benefit from continued psychiatric care, more specifically for psychotropic intervention regarding

[4] Reference to this is also alluded to in Dr Miller's report as time reason given by father for reports made by the stepchildren of adverse behavior by father

her symptoms of dysthymia and anxiety

- That Dr. Eilender find a specialist, either psychiatric or psychological, who addresses Obsessive/Compulsive Personality Disorder[5] and resulting behavior patterns that make it difficult for an individual to function on a daily basis and that are obviously interfering with the family's ability to function as a group.[6]

Mr MacIntosh's report reflected that both mother and father reported being under the care and treatment of a psychiatrist at the time of their respective interviews and evaluations At the time of respondents' evaluation mother reported being under the psychiatric care of a Dr. Foreman (who had prescribed Zoloft for her); while father failed to disclose who he was treating with.[7]

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[5] Hereinafter referred to as "OCPD"

[6] It is evident to this Court that father was aware of this requirement in that he sought out and obtained a psychiatrist to treat him for OCPD, a letter was written by his attorney regarding the need for father's treatment with regard to this issue, it was raised in at least one 583 referral, and acknowledged as a required course of conduct during at least one referee hearing (of October 3, 2005)

[7] The Court notes that during the course of the trial, father only disclosed treating with Dr Gonzales for his OCPD Dr Gonzales began treating further for OCPD in June, 2005, but father severed treatment with the doctor in July, 2005 after only seven sessions. Consequently, after receiving the recommendation for treatment, father failed, refused or neglected to obtain the same Moreover, father never provided anyone with information regarding Dr Gonzales diagnosis or his prognosis, nor did he supply anyone with true and accurate information regarding the nature or status of this treatment Therefore, it appears that through his own conduct father never obtained

Subsequently, an "Updated Service Plan" PAA was formulated and adopted by the Court.[8] In the "Updated" PAA added goals and requirements for these parents, included the following

For mother.

- Participate in Domestic Violence class,
  - Follow all recommendations of the program administrators,
  - The intended outcome of her participation was for her to learn ways of escape from being abused.

For father.

- Participate in domestic violence and anger management class;
  - Attend and participate in sessions to help him with his anger and abuse;[9]
  - Utilize and demonstrate the coping skills that he has learned;
  - The intended outcome was that he would be able to effectively communicate without abuse

This PAA also included required conduct of respondents with regard to the children The Court notes, in particular, that the discipline technique

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the level of therapeutic intervention needed to address underlying problems caused by his Obsessive/Compulsive personality disorder "OCPD")

[8] People's Exhibit 2

[9] The Court notes that in August, 2007 (long after father had completed the anger management course) he continues to deny that he has or ever had any problems with anger management or that he ever engaged in domestic violence See Defendant's Exhibit "O"

which the parents were to utilize were to be to take away privileges, make use of time outs (and for Lillian, also utilize naps) as a form of discipline.

From the end of July, 2005 until October 3, 2005 (during which period the children were in both of the respondents' care), protective services received four additional complaints of domestic violence, which were premised upon the alleged actions of the father. Two of the complaints received during the period of August, 2005 until October, 2005 related to allegations of domestic violence by father against mother, while two of those reports related to domestic violence by father against Hannah. Ms. Romeo-Perez (of DHS) reported that two of the four reports were found to be substantiated One of the substantiated reports related to domestic violence by father against a child, while the other related to domestic violence by father against mother (which incident is reported to have occurred in September, 2005)

On October 3, 2005, the father was removed from (and thereafter remained absent from) the family residence, and the children were left in the care and custody of their mother from that date until February 23, 2006, at which time the children were again taken into protective custody due to mother's suicide attempt

Following hearings held on October 3rd and 10th, 2005, services through Families First were put into place in the home In addition, Ms. McCauly (who had been employed by the Eilenders in August, 2005) remained in the home to provide in-home assistance in caring for the children Further, in addition to these in-home services, Referee Hand indicated his belief that the family needed to bring another family member (such as mother's mother) into the home to provide additional assistance to this

family (over and above Ms McCauly and the services provided through DHS), given his concerns over mother's ability to effectively handle and parent the children at that time (it having been observed by the Court that mother appeared to be in an extremely precarious and fragile state during the course of various Court proceedings) By order of the Court, dated October 18, 2005, the parents wore directed to immediately procure some type of (additional) in-home assistance, but this was never done [10]

The Court also notes that the transcript of the October 3, 2005 review hearing discloses that.

> . [w]e are asking that the parents participate in and complete a parenting class, maintain suitable housing, participate in family and individual counseling and domestic violence counseling for both parties And they did complete the psychological evaluation and I am also asking for psychiatric treatment for both parents. However, DHS does not pay for psychiatric treatment so we're asking that the parents be ordered, however, and perhaps they have insurance to cover that; Mr Eilender's insurance will cover that.
>
> (Transcript at p 5)

Further, when referee thereafter asked (on the record and in father's presence as is reflected by the record why DHS was asking for psychiatric counseling for father, Ms Burnette responded that

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[10] This is indirect contravention of the self-reported behavior relayed by father to Dr Miller

"[b]asically it was part of the clinic—" (See transcript at pp 6-7) [11]

On October 10, 2005, in addition to the Parent Agency Agreement ("PAA"), father was ordered to refrain from telephoning the home or the children, due to inappropriate contact which he had initiated with the children during the period between the October 3rd and October 10th, 2005 hearings During the early October, 2005 contacts between father and the children, he blamed mother for all of the problems faced by the family. Referee Hand also indicated his concerns over father's refusal to provide the family with any financial funding or assistance following the October 3, 2005 hearing.

While father has continuously placed the blame for the family's situation on others and continues to contend that the failure to complete the cleanup of the home was not attributable to his action (as well as to assert that the clean-up of the home had been completed before he left the home on or about October 3, 2005), the testimony presented by numerous other witnesses contradicts his assertions [12] Father's continued inability to recognize and

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[11] These references, when taken in the context of the case as a whole, demonstrate to the Court that father knew that psychiatric treatment was not only a requirement in this case, but was his obligation to procure and pay for

[12] The Court notes for the record that during the course of the trial, the issue of the admission of Exhibit "J", and subsequent suppression of this exhibit, came into question Originally, father represented (through his counsel that this exhibit represented the condition of the home when father returned to the home with his attorney on March 8, 2006, and that the pictures were taken contemporaneously therewith Premised upon this representation, the pictures were admitted into evidence Subsequently, this was established not to be the case and, therefore, the Court found that a sufficient foundation for the admission of the photos had not been established The Court

address his involvement and responsibility for the issues that brought (and kept) the children in care remains problematic and clearly impaired father's ability to move forward and correct troublesome conduct throughout these proceedings [13] Obviously, if one is unable to recognize and acknowledge problematic behaviors, one is not truly able to rectify such behaviors

While father attributes his contribution toward the children being taken into care to his passivity and, therefore, inability to protect the children, he continues to ignore active behavior on his part which contributed to and/or otherwise caused the children to come into (and remain) in custody

Ms Marianne Barley, a neighbor and the parent of one of Marvin's friends, testified that Marvin reported incidents of abuse, by father, that were directed toward the children and mother. These reports related to pro-petition incidents, which included allegations by Marvin that father had dragged the children down the stairs, locked the children in their rooms, and physically forced the children not to move. It also included allegations of father generally hurting mother. Marvin indicated that he was afraid to speak of such things and that

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further notes, for the record, that the dates on the pictures, as date stamped by the photos belie the testimony presented for their admission, in that some photos have no date stamp, while others are date stamped 3/19/06, 8/3/06, 8/4/06 and 8/6/06

[13] While this Court did not find Dr Miller's testimony to be credible, it nonetheless notes that when specifically asked questions by the doctor regarding the allegations that brought the children into care (and to which father plead no contest) father continued to deny any and all responsibility or involvement, and still lacked any insight into his own behaviors despite services having already been provided (as recommended in the report)

he had been directed to never disclose what was going on in the Eilender home to others. The Court cites this testimony here only as a backdrop against post-adjudication incidents and father's continued denial of abusive behavior.[14]

Ms Barley testified that she and her husband came to the Eilender family's assistance after the children were removed She testified that she (and/or her husband) helped with the lawn and assisted in cleaning the Eilender home. On one such occasion, when she was present to assist mom in cleaning up the interior of the home, during a period shortly after the children were removed, she noticed that numerous doors were off their hinges She indicated that mother told her that father had taken the doors off the hinges to eliminate the children and mother from being able to seek shelter from father

Ms Barley also testified that on another occasion, after the children were returned to the care of both respondents, she returned to the home to help mother clean the family room. She testified that this occurred sometime in August or September of 2005, after mother returned from the hospital. At that time she observed clothing and dirty laundry everywhere Ms. Barley attempted to determine which clothing still fit the children and to assist with the laundry, which she indicated appeared had not been done in some time,

Michael Miner testified that when he was there to help clean the home, the garage was never

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[14] It is also mentioned in juxtaposition to father's contention that the children were lying about incidents only after family therapy, which rather insinuated was attributable to and/or the result of vindictive behavior by Dr Stulberg, who was trying to somehow "get back" at father for having filed an (unfounded) grievance against the doctor.

touched, as it was "David's territory" He also indicated that despite the fact that the kids were returned home, there was still a lot to be done in the home, such as addressing holes in the walls and clearing areas of the basement.

In October, 2005, following father's removal from the family residence, Ms. Barley testified that she again returned to the home upon receiving a call from mother who was seeking Ms. Barley's assistance in cleaning out additional rooms which had been within the sole purview and control of father until that time These rooms included a bedroom and a study which were locked. At that time, mother was attempting to accommodate Marvin's desire to have his own bedroom, up until that point Marvin had shared a room with his younger brother, Charlie

When Ms. Barley unlocked and entered the bedroom, she found hundreds of cameras and expensive camera equipment, men's parka's, sleeping bags, and other men's items. She described the room as "over-flowing with men's stuff". Although Marvin wanted his own room, she reported that Marvin was visibly upset about the prospect of having his father's items removed from the room because "we can't touch, its dad's stuff" Ms. Barley testified that she spent four hours taking things out of the "locked bedroom". During this process, she found toys that wore stuffed into items on the shelves in that room Ms. Barley testified that she was told that the toys were in that room because they had been taken away from the children by dad, when the kids were being punished

When the second locked room (the study) was unlocked, Ms. Barley observed "tremendous clutter, paper, boxes, and mail everywhere". She indicated that she was only able to make a path into the room.

The Court found Ms Katie McCauly (who had been hired by the Eilenders after the children were returned to the parents' care), testified that she met the Eilender family at the Jewish Community Center, to be extremely credible She testified that she became employed by the Eilenders In August 2005 to assist them in the care of the children Her employment with the Eilenders spanned a period during which both parents were residing in the home with the children, as well as a period following father's removal from the home. When she started to work for the Eilenders, in August, 2003, the home looked "ok on the surface". However, she reported that there was clutter in the home when she came to work there, animal feces present, and maggots in the couch. She indicated that she would regularly document things and fax information to St Francis until the day that she resigned

Ms. McCauly also testified that during the period following father's removal (in the beginning of October, 2005) until November, 2005 (when she resigned sometime around Thanksgiving), she did not notice the condition of the home deteriorating

Ms McCauly testified that during the period of her employment (from August, 2005 until November, 2005) there were always people coming in to check up on things, and there was someone who would come to work with mom and the kids "to help them adjust things." Ms. McCauly further testified that there was often someone there "trying to help them get things together as a family".[15]

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[15] While various witnesses testified to the level of services being provided to the family during this period of time, the Court notes that father's contention during his testimony that services were not being provided during this period, therefore, appears to the Court to be incredulous

Michael Miner testified that mother received a lot of outside help during this period of time. He indicated that the minor children were happy with the organization in the home as well as with the new things that were in the home. Although he reported that there was still some clutter in the home, he indicated that things looked a lot better.

Ms. McCauly testified that while she was employed by the Eilenders there were certain rooms that were locked and which were not accessible by anyone other than father. There were also locks on certain items, which made items unavailable to anyone in the family other than father These items included the air-conditioning, thermostat, freezer, certain doors and the "den". Often the temperature in the home was "very cold" At one point, she reported to work and found that the thermostat had been pulled out. She testified that this all occurred while father was still residing in the home.

She reported that there were days when there was no food available for the children or mother Although Ms. McCauly testified that she discussed this issue with father, his conduct was not remedied while she remained in the Eilender's employ As a result, Ms McCauly reported times when she would have to buy food for the family out of her own funds, and on occasion had to also purchase diapers for Lillian, because there would be none in the home for her use. She also testified that she would personally have to supply the children with their lunch money, because no funds would be made available for the children.

Ms. McCauley testified that father would have special "expensive" food that was different from the food that he would make available to the family Mother also testified to this situation as well

On some days during Ms McCauley's employment with the Eilenders she would arrive and find the children's rooms locked from the outside, while on other days the doors would be found to be off of the hinges. She further testified that the family was never allowed access to two of the rooms while father was still residing in the home, which included the den and one of the bedrooms upstairs

Ms McCauly said she witnessed daily physical violence between the children, which included their use of objects (such as knives), striking each other, sitting on each other and other threatening conduct She testified that the children acted out in ways which were consistent with the behaviors they had observed and, therefore, learned She also testified that father would say and use words in front of the children, which Ms. McCauly thought to be inappropriate, and then she would be witness to the children repeating the words that they had heard from their father.

She testified that she regularly witnessed violence between mother and father. This included verbal and physical abuse Although she testified that mother generally "tried to appease" abusive conduct would still come into play

She characterized father as an "absentee parent" while in-home services were being provided to the family. She also reported that he would require her to work hours which were well beyond what she was hired to cover, and that this occurred on a regular basis Because Michael Miner had taken on an authoritative role with the children when he lived at home with his mother, he indicated that there would be times (during this period of time) when his mother would call him for assistance She would say, "Marvin is kicking me", and his mother would put Marvin on the phone and Michael Miner would at-

tempt to deal with it over the phone, because he "was like the dad to these kids since they were born".

Ms McCauley testified that when the parents would communicate, their voices would be raised or, conversely, there would be no communication at all She also testified that there were times that she would witness father take mother's purse away from her and lock it up in his study She said this occurred two or three times while she was in the Ellenders' employ Other times, mother would report that she had no funds and that father had taken away her credit cards

Ms McCauley testified that she was instructed to "sit on the children and press them", but she refused to do so, because she "didn't believe in that" She indicated that both parents said that they did this as a form of discipline, and that she saw such discipline utilized by both parents on the children She particularly recalled incidents of this form of discipline involving Charlie and Hannah She testified that when these parents would engage in this form of discipline, it could occur wherever they were at the time, which included it happening on the floor, steps, chair, and the couch In Ms. McCauley's opinion, she viewed such discipline as being "excessive punishment"

Ms McCauley also witnessed incidents when father would lock a child into his room. She saw father do this to Marvin and to Charlie.

Ms. McCauley further testified that she was called into the school to address such issues as "why dad had pulled Hannah and hurt her arm"

When the parents would attempt to impose their disciplinary tactics upon the children, the children would yell, try to run away and cry. At one point, even the youngest child (Lillian), who was

about two years old at the time, ran out into the street naked From her observations, the two oldest children essentially viewed themselves as the parents in the household As a result, the children didn't like being disciplined because they felt that they were the "adults". Ms. McCauley testified that the family's inappropriate and violent conduct occurred so often it was "like normal fare"

Ms. McCauley also testified to two separate occasions (between August and October, 2005) when she had to take the mother to the hospital. One time was because mother had a miscarriage, while another time was because she was so badly bruised on her arms and in her private area and was loosing blood that Ms. McCauley had to convince father (who initially didn't want mother to go) that mother had to be permitted to go to the hospital. During this occasion father did remain home to care for the kids It was Ms. McCauley's recollection that on this occasion mother was required to remain in the hospital for some period of time (which might have been for upwards of one week).

Ms McCauley testified that mother had informed her that the bruises had been caused by father. These bruises were around mother's vaginal area, her inner thighs and on her arms. Ms McCauley said that these injuries were reported to have occurred during what was relayed to be a standard dispute over "one not wanting and one feeling they were entitled"

Ms McCauley testified that the downstairs half bath still hadn't been repaired during the period that she was employed by the Eilender family. She said it would back up so badly that one could smell it though-out the house She testified that when she left the Eilenders' employ, in November,

2005, the bathroom plumbing for that toilet still was not repaired.

Ms. McCauley testified that during the period that she was in the Eilenders' employ, there were periods when the only operating phone in the home was her own cell phone.[16] She personally tried to assist mother in managing finances due to the delinquent state of utilities, and mother's constant fear following the father's removal that the utilities would be shut off. Although Ms. McCauley didn't know for certain when the utility arrearages occurred, she was certain that a portion of the same emanated from a period prior to father leaving the family abode because shutoff was being threatened in October or November, 2005, before she left their employ

Ms. McCauley also testified that while she was rendering services there were periods during which she simply wasn't paid (and still has not been paid).

As of November 7, 2005, there were some encouraging signs regarding mother's ability to parent the children (with substantial outside assistance). DHS reported that with in-home services in place the children were doing well following father's removal from the home As of November, 2005, father was afforded supervised visits with the children. On November 7, 2005, the Court appointed a special advocate for the children, with such individuals to be designated by the Child Abuse and Neglect Council's Janice Morganroth Advocates for Children (JMAC) program.

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[16] While father acknowledged that he was to be responsible for the payment of the utilities, he attempted to explain away his failure, by indicating that mother had failed to send him copies of the bills so he could pay them

On November 30, 2005, father began to attend individual therapy with Oakland Family Services. However, in his intake assessment, father failed to disclose his diagnosis of obsessive compulsive personality disorder, nor did he acknowledge any of the behaviors which contributed to the children being brought into care In essence, father continued to place the blame for the family's situation upon mother, and only indicated that his responsibility was limited to his inaction and merely amounted to (in his mind) a failure on his part to protect the children from mother's neglectful behavior More importantly, father misrepresented the nature of his treatment with Dr Gonzales, and indicated that he had an ongoing therapeutic relationship with the doctor for addressing issues of anxiety, which he appeared to portray as merely being situational in nature.[17]

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[17] The Court notes that Dr Gonzales (who was called by father) testified that he treated father for problems with obsessive compulsive personality disorder for seven weeks spanning a period from June, 2005 through July, 2005 Therefore, as of the time that father initially saw Ms Winter-Long at Oakland Family Services, father had already unilaterally terminated his treatment with Dr Gonzales, in direct contravention of the Court's order, that he engage in such therapy Father had indicated to Dr Gonzales that he would no longer require his services as the Court would be providing him with such therapy (which representation is in direct contradiction with (the record in this case) While father now pleads ignorance of any diagnosis of OCPD, this also appears to be incredulous, inasmuch as father's own counsel divulged the diagnosis to Dr Gonzales and the evaluation of the psychological clinic provided that treatment for this disorder was to be part of father's treatment plan Furthermore, although father admitted to hoarding items (when interviewed by Mr MacIntosh, he failed to disclose to any subsequent service provider any of his activities in this regard

As of November 30, 2005 father reported to Ms. Winter-Long that he had filed for bankruptcy court protection, and as of December 9, 2005, pleadings were filed by father's retained counsel (in this case) requesting that a court appointed attorney be provided for father, alleging that father had reportedly filed for bankruptcy court protection [18]

As of February 2, 2006, the Court provided DHS with discretion to permit father to have unsupervised visits with the children, over the objections of workers involved in the case At this time, mother was also ordered to comply with Wrap Around Services through DHS while the children remained in her care in the family's home As of February 2, 2006, DHS reported that there were fifteen protective service referrals since the children came into care in May, 2005 (which represented an additional eleven referrals since father's removal from the home in October, 2005) As of February, 2006, many of the additional referrals related to mother's unusual behavior, although as of the February 2, 2006 none of the referrals relating to mother's behavior had as yet been substantiated

At the February 2, 2006 review hearing there was great concern regarding mother's then current mental health status as well as concern which still existed over father's refusal to pay for standard home expenses and other issues During this period the Court struggled with 1) trying to balance the fact that the children appeared to be doing better being placed together and living with mother (despite the precarious nature of her mental health status) than they had done while they were in foster care, with 2)

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[18] However, a review of the Bankruptcy Court pleadings reflects that father didn't file for Chapter 7 bankruptcy protection until February 24, 2006

the disconcerting reports it was receiving regarding the behavior of both parents and concerns which the Court was left with after observing first hand the conduct of the parents during the numerous review hearings conducted up to that point in time.

By court order of February 9, 2006, the parents were required to reimburse the costs associated with the children's Guardian Ad Litem ("GAL"), the cost of their respective court appointed counsel, the cost of the children's out of home care, as well as the children's medical care, for the period from and after May 20, 2005

Various witnesses testified that father's refusal (during the period between October, 2005 and February, 2006) to provide necessary financial support for the family placed mother in a position where she had to beg for food and gas money, and mother had to donate time in order to obtain clothing from the Salvation Army for the children.

On February 23, 2006, the Court ordered the emergency removal of the children, as a result of mother's attempted suicide and contemporaneous hospitalization At the time of the removal, the Court noted that despite the provision of "very significant in-home services provided to the family", there have been a number of protective service referrals since the children came into care, and it had become evident "it is contrary to the welfare of the children to remain in the home during the pendency of the hearing because mother is now unable to care for the children in this ongoing neglect case".

From May, 2005 until February, 2006, the family had been provided with services through Easter Seals, Families First, Wrap Around Services, in-home services and family reunification services Mother, Marvin and Charlie had been attending weekly individual therapy at Haven, and mother,

Hanna and Lewis had attended group therapy also at Haven.

During this time period, father had individual therapy through Oakland Family Services, and saw Dr. Gonzales on a private pay basis for seven sessions during June and July, 2005

Father had also attended Anger Management classes through the CHOICES program, there had been regular home visits[19], and (from November, 2005 until February, 2006) father had weekly supervised parenting with the children at St Francis in the presence of a CASA worker During this same period, mother received group support through the children's school, the JCC and members of the neighborhood (of both an emotional and financial nature), in addition to receiving foster care services.

During November and December, 2005, and January and February, 2006, Jinelle Manchester, an Oakland County CPS worker, also worked with mother, while the children were in mother's care in the family home. She testified that, on average, she saw them at least one time each week.

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[19] While it was reported that father eventually became fully engaged and positively participated in a 26 week course of Anger Management classes, through which he demonstrated in his class participation and written homework assignments that he had internalized and derived some benefit from attending the course, question was raised (during the testimony of Mr Kleinstiver as to whether father was able to fully integrate the lessons of this class and, therefore, benefit to the extent necessary to permit him to properly parent the children) based upon his actual conduct following the completion of the course Mr Kleinstiver's testimony indicated that father's subsequent refusal to take responsibility for his conduct which contributed to and/or caused the children to come into care, and his continued use of physical disciplinary tactics did not indicate that had actually received the necessary level of benefit

During her weekly meetings with mother, Ms Manchester indicated that mother was often nervous and scared about various issues, including, but not limited to financial issues, and particularly whether or not utilities would be shut off, and she was "very scared, always, that she wasn't able to properly care for the kids" Ms. Manchester testified that after their sessions mother would always feel strong and secure, but then a day or so later she'd again be uncertain and scared Mother testified that during this period (between October, 2005 and February, 2006) she often could not control the children, and would have to call the police just to get the children off to school

During these weekly sessions, mother would always be grateful for and report who had helped her out, but she was clearly overwhelmed by the help she was already receiving and she "never asked for more services".

DHS reported to the Court that at the time of removal (on February 23, 2006), the home was in a state of "disarray"

Jinelle Manchester was the CPS worker who found mother and called 911 on February 23, 2006. Ms. Manchester had become involved with the Elender family in or around November, 2005, in her capacity as a CPS assigned to Oakland County. From November, 2005 until February 23, 2006, there were six or seven referrals which were assigned to her to investigate She indicated that some of these referrals were substantiated, but since services were already in place nothing was really done with regard to such referrals

By the time Ms Manchester was involved in the case, the family had already received counseling and Families First had already come and gone The family had already had the benefit of Easter Seal re-

ferrals and Wrap Around Services were about to commence. Therefore, pursuant to Ms. Manchester's testimony, there had been multiple hours per day, and multiple days per week of services provided in-home with regard to this family before she even became involved with this family.

Ms Manchester reported that some of the reports she was assigned to investigate related to the children beating each other up, as well as the children beating up mother, mom being drunk, mother's eating disorder, sexual abuse by father against mother and/or the children and a report that father had previously choked a child

As a result of these investigative referrals, the children were taken to (and interviewed at) Care House Although no sexual abuse against the children was substantiated, allegations that what the family called "crabbing" (which was characterized by physical violence that could entail suffocating, cutting off a child's circulation and/or otherwise physically inhibiting the child's ability to move) were substantiated [20] During the Care House interview, the children characterized their father as being "mean" and reported that "he hurts people" The children indicated that "crabbing" occurred on a fairly regular basis. During the interview, the children reported seeing father choke Charlie in the past Other abusive behavior engaged in by father, as re-

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[20] Father has characterized "crabbing" as something that "started out as a playful term when I was playfully and benignly wrestling with my children and got distorted into all levels of physical abuse, but at most it amounted to minimal, acceptable, temporary restraint of a child to avoid injury to that child or another child" (See page 10 of Exhibit "O") During the trial, father admitted that the children might have perceived these actions as something else and may have felt (at times) as if they couldn't breathe during these limited occasions

ported by the children, was more "emotional" in nature [21]

When father was interviewed by Ms. Manchester, on February 9, 2006, he generally denied all of the allegations. Father reported that "crabbing" was more like a bear hug to calm the kids down" Father did admit that he did use "crabbing" as a mechanism of restraint and acknowledged that the kids "may hurt themselves when they try to get out of the hold" Ms Manchester indicated that while father would generally deny allegations levied by his wife, as to other allegations he would "dance around issues and not answer directly" Father blamed a lot of the family's circumstances on mother, and said that she was "sick", without providing Ms. Manchester with a diagnosis or indication of what illness mother suffered from

Although Ms. Manchester wasn't responsible for monitoring the family's financial situation, she was informed that father had filed for bankruptcy and mother was having difficulty managing on the limited funds provided It was clear to Ms. Manchester that mother was disclosing too much adult information to the children, and the children reported to Ms Manchester that "mom is sad because daddy won't pay the bills" Marvin also reported being fearful that bills wouldn't be paid, and said his fears were based on things his father had told him about not paying the bills.[22]

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[21] Again the Court notes that all of those accusations by the children of physically and emotionally abusive behavior by father, pre-date any therapeutic intervention by Dr Stulberg

[22] While father attempted to caste aspersions on Charlie's ability to provide reliable information to Dr Stulberg, no such insinuation was made with regard to Marvin's propensity toward veracity

Ms Manchester testified that at the February 9, 2006 interview father reported that he had already gone to Anger Management/Domestic Violence classes, individual counseling, and parenting classes. He reported doing the things necessary to complete the PAA, but Ms Manchester was left with the impression that father was simply going through the motions

When Ms. Manchester arrived for a prearranged visit on February 23, 2006, she found that mother was unable to care for the children. When Ms. Manchester arrived, mother was in a distressed state, and mother was indicating that she was "a horrible mom" and she "couldn't do it".

Upon arrival at the home, Ms. Manchester found some of the children cleaning, and one child was in the kitchen with a neighbor making "mac and cheese".

When Ms. Manchester encountered mother (who has an acknowledged eating disorder) it was evident to her that mother had "purged a lot" as she was covered with vomit Mother was crying, appeared distraught, and indicated that she had taken too much of her medication Ms Manchester indicated that she decided to take mother to Common Ground for an assessment, and sent mother to her room to change out of her vomit covered clothing When mother didn't return within what Ms Manchester perceived to be a reasonable period of time, she went upstairs to check on mother, since mother had been threatening suicide.

Ms Manchester testified that she found mother passed out, partially dressed, and laying on broken glass. She then checked to make sure that mother hadn't cut herself (given her suicide threats), and was able to determine that mother had not cut herself Ms Manchester then testified that

she phoned 911 for mother's care and the children were removed from the home and taken to Children's Village

When examined (during the course of these proceedings), respondent mother testified that she overdosed on her medications with the specific intent of having the children taken into protective custody "for their own good", and that she specifically timed the incident to coincide with the anticipated arrival of foster care workers and/or someone from CPS for a scheduled (and previously confirmed) visit Mother testified that she thought that by trying to kill herself, the children would get the care they needed in foster care, since she recognized that she could not care for the children on her own.

Ms Manchester indicated that despite the fact that the "home wasn't the cleanest" on February 23, 2006, the condition of the home (at that time) would not have caused removal of the children Mother's room was "really bad" and the rest of the home "looked lived in". On February 23, 2006, Ms Manchester felt that the condition and clutter in the home (other than in mother's room) was consistent with what she had encountered on her prior visits to the home, and was not to the state evidenced by the May, 2005 pictures (which Ms Manchester had viewed in the past) [23]

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[23] Although father introduced various sets of pictures with regard to the condition of the home at various points in time, no pictures were provided by father that demonstrates the state of the home on February 23, 2006, the Court, therefore, has relied upon the testimony of the various witnesses with regard to the condition of the home at the time of the second removal, which testimony has consistently portrayed a picture of the home being in a fairly consistent state following the return of the children to the family abode (which covered a period when both parents resided in the home with the children)

Ms Manchester also testified that when she went to get the children's car seats (in order to transport the children to Children's Village), there were no vehicles in the garage, and while there was "stuff in the garage" it looked like (and was no worse than) most other garages. At that time, there were two vehicles parked outside of the garage.

Throughout her involvement in the case, Ms Manchester indicated that there were concerns over mother's ability to care for herself (because of her eating disorder and mental health issues). However, since mother didn't seem to directly be hurting the children, Ms. Manchester indicated that her superiors felt it was a "grey line" that simply meant that CPS didn't get involved with mother's personal issues until they became a danger to the children on February 23, 2006 (given that services were already being provided through foster care and the courts) During Ms Manchester's involvement, the abuse which was reported related more to the children abusing mother, than the other way around, and the children were then in the process of learning techniques to respect their mother Ms Manchester indicated that she did observe the boys, during this period, not obey mother, but she never observed the boys hit mother The children did engage in a lot of "rough housing" in the house. Once the children were again placed into temporary custody, CPS closed out its investigation without making further findings, as the children were already removed from any danger as of February 24, 2006. As a result there was an administrative closure of the then outstanding CPS referrals (in April, 2006) due to the existence of both foster care and court services for the children.

It appears that from February 23, 2008 until April 10, 2006 mother was hospitalized as a result of

her February 23rd suicide attempt. During and following this period, since the children had been removed from the home, father was permitted to return to the home and utilize the same as his residence

Despite the period of time that had passed since the children had come into care (in May, 2005), and the numerous CPS referrals that had been made regarding this family following the Court exercising jurisdiction over the children, because of father's general compliance with the terms of the PAA, as well as the additional counseling he had obtained, the Court continued efforts to effectuate reunification of this family, and family therapy was ordered and commenced. However, despite father's general PAA compliance, the Court was still extremely concerned for the safety of the children, and a deliberate course was mapped out in order to facilitate possible reunification of the children with their father The services included with an eye toward reunification included individual therapy of the children with Dr. Stulberg and family therapy with Dr. Stulberg, so that significant outstanding issues (between father and the children) could be addressed

In large part, a review of the Court file reflects that the family therapy sessions were put into place to specifically address outstanding issues between father and the children [24]

The PAA dated December 30, 2005[25] appears to be the first agreement which was actually executed by father. However, this PAA was not executed by mother, because she was in Havenwyck at

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[24] See Order Following Permanency Planning Hearing (Child Protective Proceedings), dated April 11, 2006

[25] People's Exhibit 3

the time father executed the same (on February 28, 2006) and at the time of adoption by the Court

This PAA, added additional requirements for these parents, in what clearly had been a fluid and ever changing situation, as more of the underlying root problems which lead to the environmental neglect became evident The additional and/or expanded requirements of this PAA, included, the following:

<u>As to mother</u>

- Obtain and maintain emotional stability and coping strategies
  - Participate in counseling sessions at the Haven;
  - Maintain 100% attendance and participation during sessions, and be open and honest with counselor;
  - During Individual counseling sessions she must focus on the specific problems that interfere with parental role performance She is responsible for learning improved personal/social responsibility for child care, logical and responsible decision-making, reduction of family conflict, development of age appropriate expectations, displaying greater parent/child affection and trust, appropriate expression and control of feelings, opening and strengthening of the family support system, improvement of communication skills, being a role model and taking responsibility for behavior;

- Follow all recommendations of the counselor,
- Complete all necessary paperwork and sign release of information,
- Participate in domestic violence group counseling sessions at Haven,
- Comply with psychiatric services and medication prescribed;
- Obtain appropriate parenting skills,
- Participate in parenting classes through Haven;
- Display appropriate parenting skills learned through parenting classes in the home on a daily basis;
- Be responsible for learning· behavioral management, praise, how to use time-outs, choices and consequences, how to express feelings and needs by assuming ownership of behavior and appropriate age development

- Provide/maintain a clean, safe nurturing environment for all of the children, with the environment to remain free of domestic violence and conflict;
- Provide transportation for a list of activities outlined in the PAA,
- Allow caseworker visits twice per month,
- Provide adequate structure and discipline for the children that include monitoring their development Discipline was to include time-outs, grounding, verbal reprimands, rewards and an

explanation of why the child is being rewarded or disciplined for their actions, and all physical discipline was prohibited.

As to father:

- Obtain and maintain emotional stability and coping strategies.
  - Participate in counseling sessions at Oakland Family Services,
  - Maintain 100% attendance and participation during sessions, and be open and honest with counselor;
  - Focus on the specific problems that interfere with parental role performance, and be responsible for learning Improved personal/social responsibility for child care, logical and responsible decision-making, reduction of family conflict, development of age appropriate expectations, displaying greater parent/child affection and trust, appropriate expression and control of feelings, opening and strengthening of the family support system, improvement of communication skills, being a role model and taking responsibility for behavior,
  - Follow all recommendations of the counselor;
  - Complete all necessary paperwork and sign release of information.
- Obtain appropriate parenting skills.

- Participate in parenting classes through the Alpha Family Counseling,
- Display appropriate parenting skills learned through parenting classes in the home on a daily basis,
- Be responsible for learning behavioral management, praise, how to use time-outs, choices and consequences, how to express feelings and needs by assuming ownership of behavior, appropriate age development and effective disciplinary methods providing alternatives to corporal punishment,
- Follow all recommendations made by provider,
- Complete all necessary paperwork and sign release of information,

• Obtain and maintain healthy relationships,

- Participate in domestic violence counseling through the Choices program,
- Learn alternative ways to express his anger;
- Improve communication skills with his family;
- Complete all necessary paperwork and sign release of information.

Thereafter, in the PAA dated April 3, 2006[26], the following goals and objectives were added, or

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[26] People's Exhibit 5

otherwise expanded those already in place under prior PAAs:

As to father:

- Complete individual and domestic violence counseling;
  - He was to continue in and satisfactorily complete therapy, both individual and as to domestic violence, and meet all his treatment goals, through Alpha Family Counseling and Choices;
  - Demonstrate learned techniques from this counseling in his daily life and in interactions with the children and mother;
  - Attend all therapy sessions, interact appropriately, participate and be on time;
  - Sign a release to ensure that the worker could receive any progress reports,
  - The expected outcome was that he would learn and utilize appropriate coping skills and address issues regarding domestic violence
- Obtain appropriate parenting skills,
  - He was to attend and participate in all parenting classes through Alpha Family Services;
  - Demonstrate learned parenting techniques in his interactions with his children;
  - Successfully complete and benefit from classes,
  - Submit a completion certificate,

- The expected outcome was that he would display appropriate parenting skills.

- Maintain and develop a further bond with the children,
  - He was to attend all visitations at the agency,
  - Be on time for all visitations;
  - Demonstrate appropriate interactions with his children during the visits;
  - The expected outcome was that he would maintain any existing bond with his children and develop further relationships with the children necessary for reunification.

As to mother.

- She was to take necessary steps to ensure healthy and stable mental health;
  - She was to continue to receive therapy for her diagnosed eating disorder, Bipolar and stress,
  - Follow all directions of her therapist/doctors and take medications as prescribed and directed,
  - Demonstrate learned therapeutic techniques in her daily life;
  - Be on time for all appointments, participate in and complete all therapy goals;
  - Receive domestic violence services;
  - Sign any necessary releases so that worker could obtain information for case management;
  - The expected outcome was that her medication would be regulated

and she would demonstrate stable mental health

- Develop and utilize appropriate parenting skills;
  - Attend and participate in all parenting classes through Catholic Social Services;
  - Demonstrate learned parenting techniques in her interactions with her children;
  - Successfully complete the parenting class;
  - Submit completion certificate to worker;
  - The expected outcome was that she would learn and implement appropriate parenting and behavior medication in dealing with her children
- Maintain and develop a further bond with the children;
  - She was to attend all visitations at the agency;
  - Be on time for all visitations,
  - Demonstrate appropriate interactions with the children during the visits;
  - The expected outcome being that her bond with the children would remain strong.

On June 7, 2006, following a review hearing where inappropriate communications from the father to the children were again reported, father was again ordered not to discuss the case with the children (or in their presence). This order and the other orders of the Court regarding such behavior have

remained in place and were continued throughout the pendency of these proceedings.

At a review hearing on July 14, 2006, father was reported (and acknowledged) engaging in tape recording the children during his extended parenting time with them This activity made the children feel extremely uncomfortable and was also found to be inappropriate behavior. Father was ordered to discontinue this practice Moreover, at this time father was refusing to engage in family therapy with Dr. Stulberg Consequently, the Court reminded father that his participation in family therapy was Court ordered and he was required to participate in such therapy if he desired to have a chance of reunification with his children [27] On July 14, 2006, father and mother it was again reiterated that neither of the respondents were to discuss the case with (or in the presence of) the children

Although both respondents were found to be in compliance with the PAA during the next reporting period (which ended August 25, 2006), such a finding does not preclude this Court from concluding that respondents had failed to benefit from the services provided and, in fact, the Court noted (at that time) that considerable work remained to be done by respondents before the children could be returned to either of their care

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[27] Although father thereafter returned to family therapy (pursuant to the court order), it is apparent that he did not do so with an open mind, and that this (together with his refusal to accept responsibility for his own actions) significantly impaired his ability to benefit from the therapy provided Therefore, the failure of father to benefit from such therapy is not Dr Stulberg's fault (or that of DHS as argued by father), but rather the direct result of father's own limitations and inability to be open to such therapy and/or to accept responsibility for his own wrongful conduct

In the reporting period preceding the September 27, 2006 review hearing, father had again engaged in conduct which resulted in yet another CPS referral. This referral emanated from an incident where father had "grabbed Charlie's wrist". Although the Court did not act to limit father's visitation at that time, father's continued physical disciplinary actions were clearly problematic given the facts and circumstances of the case, and demonstrated (to the Court) the limited benefit derived by father from the services rendered as of that time (which had in part focused on teaching father ways to discipline the children without resorting to physical force)

The parties' last PAA was one dated October 5, 2006[28]. In this PAA the following goals, objectives and/or requirements were added.

As to father:

- He was to attend family counseling;
  - This therapy was to be with the children;
  - He was to participate in the family therapy;
  - He was to demonstrate learned parenting techniques in his interactions with the children;
  - The expected outcome of this therapy was for father to accept responsibility and gain understanding about how his behavior affects his children, as well as to display appropriate parenting skills.
- Obtain and maintain appropriate housing,

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[28] People's Exhibit 4

- He was to obtain and maintain suitable and appropriate housing;
- Allow case worker to do an assessment of the home;
- Maintain a clean and safe home;
- Allow the case worker into the home a minimum of quarterly,
- The expected outcome was that he would provide the safest and least restrictive environment for the children.

- Obtain and maintain financial security;
  - Provide all necessary paperwork pertaining to his bankruptcy;
  - Provide verification of his current income;
  - Provide verification of his current financial situation;
  - The expected outcome was that he would become financially secure in order to provide for his children
- Maintain contact with the case worker;
  - Maintain a minimum of bi-weekly contact with the case worker via telephone, mail, e-mail and/or face-to-face contact;
  - Communicate any progress or concerns with the case worker,
  - Submit all verification of progress to the case worker in a timely manner,
  - The expected outcome was that hr would be able to communicate and work appropriately with the case worker

As to mother:

- With regard to taking the necessary steps to ensure healthy and stable mental health, the requirement that she receive therapy for her past alcohol/prescription drug problems was added.
- Obtain and maintain appropriate housing,
  - Obtain and maintain suitable and appropriate housing;
  - Allow the case worker to do an assessment of the home;
  - Maintain a clean and safe home;
  - Allow the case worker into the home a minimum of quarterly;
  - The expected outcome was that she would provide the safest and least restrictive environment for the children
- Obtain and maintain a legal source of income;
  - She was to continue to try to obtain employment as not to depend on her alimony in order to pay rent,
  - Continue to work at the Salvation Army;
  - Provide verification of income to the case worker;
  - The expected outcome was that she would be able to provide, at a minimum, for her children's basic needs
- Maintain contact with the case worker,

- Maintain a minimum of weekly contact with the case worker via telephone, mail, e-mail and/or face-to-face contact,
- Communicate any progress or concerns with the case worker;
- Submit all verification of progress to the case worker in a timely manner;
- The expected outcome was that she would be able to communicate and work appropriately with the case worker.

At the review hearing of October 30, 2006, testimony indicated that father still had made no progress in family therapy by that date. Dr. Stulberg testified that father's (continued) refusal to take responsibility for any of the past problems with the children, including mentally or physically abusive behaviors in the home, precluded him from making any progress in family therapy, and that such conduct (by father) was extremely frustrating to the children Therefore, despite the provision of numerous services, it appeared to the Court (premised upon the testimony presented) that "father has gone about as far as he is going to go in being able to deal with the issues that brought this matter to the Court", which did not appear to be sufficient to remediate the issues and provide sufficient safeguards against reoccurrence. At the time of the October 30, 2006 review hearing, it appeared that the only real progress that had been made had been made by mother (but even that was tenuous at best). Since the parents were then separately planning for the children's care, it was then hoped that if mother would get help from other family members to provide

care for the children, and also get her mental health issues under control, there might be a possibility of reunification However, this has not occurred and at the present time the children have now been under the Court's temporary jurisdiction for almost three years.

Given mother's conviction for perjury (a fact which she regularly referred to during the course of these proceedings and alluded to as being justified on the stand as a means to eliminating the possibility of father again obtaining unsupervised time with the children) this Court has carefully listened for substantiating and/or other corroborating evidence, rather than basing its findings on the allegations made by mother against father Additionally, from the Court's careful review of the bankruptcy records (and pleadings contained therein[29]) and testimony of father in these proceedings, it also appears that father has considerable problems with veracity[30] In this regard, the Court bias considered the totality of the record in these proceedings, certain incredulous statements by father, father's failure to fully disclose and/or misrepresent information to various service providers, as well as father's failure (in the bankruptcy proceedings) to disclose the existence of numerous assets, misrepresentations regarding his actions with regard to accessing safety deposit boxes, and the potentially fraudulent transfer of assets to his mother in order to avoid obligations which he in-

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[29] See People's Exhibit 12 (also marked as Defendant's Exhibit H)

[30] At the conclusion of the trial, father asserted that his problems with veracity stem from his "disability" if one is to believe him he suffers from OCPD, and should, therefore, somehow be excused

curred [31] As a result, neither of the respondents are found to be particularly credible. In juxtaposition, the Court found the testimony of Dr. Gonzales, Sydney Smith, Jinelle Manchester, Ms McCauley, Ms Romeo-Perez, Marianne Barley, Mr MacIntosh, Michael Miner and (particularly) Dr Stulberg to be eminently more believable, persuasive, candid and credible.

On January 30, 2007, the Court found that sufficient progress toward alleviating or mitigating the conditions that caused the children to be placed or to remain in temporary foster care had not been

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[31] With regard to the bankruptcy proceedings, this Court particularly refers to (in this regard) the Trustee's Objections to Debtor's Motion to Dismiss Chapter 7 Proceedings, dated December 22, 2006, as well as Trustee's Objections to Debtor's Amended Exemptions Also of note, are father's continued attempts to place his omission of assets and key facts upon respondent mother, claiming that she had taken financial records during a period when the records were not sent to the marital home, but instead to a post office box held solely in father's name, and while father was residing outside of the marital home (with his own mother), such that the records would not have been accessible to respondent mother (See also Debtor's Response and Brief in Opposition to Trustee's Objections to Debtor's Amended Claimed Exemptions) The fact that the bankruptcy court found merit in the Trustee's position (and that father's position was lacking in credibility) is evidenced by the Court's order denying conversion or dismissal of the bankruptcy proceedings in an order dated February 1, 2007 Additionally, given formal adversarial proceedings which were brought against father in regards to the bankruptcy proceedings (which resulted in a compromise settlement requiring father's payment of $130,000 to the bankruptcy trustee following a settlement dated March 20, 2007 emanating from father's misrepresentations) it appears that considerable credence may be found in the Trustee's allegations that father engaged in perjury and fraudulent conduct during the course of his bankruptcy proceedings

made in accordance with MCL 712A 19(7), and that returning the children to the parents would cause a substantial risk of harm to the children's life, physical health, or mental well being. Consequently, proceedings were initiated to terminate the parental rights of both respondents to the children in this action Based upon the record of the January 30, 2007 review hearing and testimony of DHS, Sydney Smith and a CASA worker, as of January, 2007 father was still refusing to accept responsibility for any of the actions that brought (and had kept) the children in care, and that the children were no closer to being reunified with father (after considerable services had been rendered) than when they were taken into custody.

On March 2, 2007 father filed a motion seeking to withdraw his plea of responsibility under the May 2005 Petition, alleging essentially that responsibility for his current situation (with regard to potential termination of his parental rights) should be placed upon his prior counsel (who allegedly violated his procedural rights) and DHS and Dr. Stulberg (who allegedly made misrepresentations and acted in bad faith with regard to respondent father) These allegations were determined to be unfounded, and father's motion to withdraw his plea was denied on March 8, 2007.

On March 13, 2007, a Supplemental Petition (Child Protective Proceedings) was filed in this action, seeking the termination of both respondents' parental rights to the five minor children who were still under the Court's temporary jurisdiction The Supplemental Petition sought termination of the respondents' rights under MCL 712A 19b(3)(c)(i), (3)(g) and (3)(j)

On October 31, 2007, a First Amended Supplemental Petition (Child Protective Proceedings)

was filed in this action, seeking termination premised upon the same statutory basis as set forth above, but alleging additional facts and circumstances as outlined in that amended Supplemental Petition.

In separately reviewing each respondent's compliance with the various PAAs involved in this case, the Court notes the following.

As to mother

- She completed and cooperated in the referral evaluation done by the Oakland County Psychological Clinic Although she did miss her first appointment, she ultimately did appear, attend and cooperate with Mr MacIntosh at the rescheduled appointment, and the evaluation was completed as of September, 2005
- Mother was hospitalized on multiple occasions during the pendency of these proceedings, duo to her inability to maintain stable mental health status. These hospitalizations included at least three separate hospitalizations (some at Sinai Grace and others at Havenwyck) since February, 2006
- She attended nine Individual therapy sessions between October 2005 and February, 2006 at Haven.
- She attended a Survivors of Domestic Violence Support Group two times through Haven
- Mother continued, throughout the pendency of the proceedings to have difficulty following through with ap-

pointments and maintaining mental health stability.

- As of April, 2006, she had only attended 4 out of 10 Parenting Under Stress Classes, and an exception was sought and obtained in order to permit mother to complete this training
- As of July, 2006, she completed her parenting skills classes through Catholic Social Services.
- When not incarcerated, mother has maintained regular contact (at least bi-weekly) with her treating psychiatrist, Dr. Dabbagh, and self reported to the doctor that she was being medication compliant.
- However, in late 2006 or early 2007, mother self reported to the case worker that she had once again begun purging and was not always medication compliant
- Mother reported attending an Eating Disorders Support Group at Beaumont Hospital
- She attended various classes and received various services through domestic violence shelters during her residency at the same
- There were periods of time that mother failed to exercise parenting time with the children, either due to hospitalizations, incarcerations and/or due to her inability to follow through and implement steps necessary to facilitate her attendance at such parenting time sessions

- When mother did attend parenting time at St Francis, she was generally reported to be very nurturing and to have a close bond with the children, and although she has (at various times) made considerable progress in demonstrating knowledge gained from the various services provided. it is clear from the record that she never attained a functioning level (after February, 2006) which would justify return of the children to her care, given the considerable problems which she still experienced in both her parenting skills and ability to maintain mental and emotional stability. Many of these concerns are addressed in greater length below.

As to father

- He completed and attended the referral evaluation, as scheduled, through the Oakland County Psychological Clinic, and his evaluation by the clinic was completed as of September, 2005.
- He attended individual therapy with Oakland Family Services from November 30, 2005 until March 27, 2006. According to Defendant's Exhibit E, this therapy was ended (not because he met his treatment goals, but rather) because he would be continuing therapy through Alpha Family Counseling In father's final progress report generated by Oakland Family Services, father was reported to have attended all sessions and was found to

have been making an effort with regard to his treatment. In a February 28, 2006 letter generated by Oakland Family Services, it was reported that father was making progress toward his goals (although the final report merely reflected that an effort was being made), and it was recommended that after he completed his individual treatment, that the family engage in family counseling to continue to address issues which were effecting the family.

- He completed attending all of his parenting classes, and achieved a score of 100% on his post test. During parenting time visits father was able to demonstrate better control of the children, as compared to periods prodating his participation in the parenting classes.
- He attended all visits with the children and generally arrived either on time or early for those visits For considerable blocks of time, father was able to demonstrate appropriate conduct with the children, however, concerns which arose during visitations shall be addressed elsewhere in this opinion.
- He completed his parenting skills training through Alpha Family Counseling in February, 2006 and contin-

ued on with Alpha for individual counseling with Ian Lloyd.[32]

- He completed his Domestic Violence training program through Choices in June, 2006
- He was compliant with the requirement that he maintain regular contact with the worker assigned to the case
- Father never provided DHS or St Francis with the records relating to his bankruptcy or proof of his income

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[32] The Court notes that Ian Lloyd appears to have aligned himself with father, and may have lost sight of the issues which father needed to have addressed, instead apparently focusing on what father needed to do to extricate himself from his relationship with mother, as opposed to gaining insight into his own active behaviors and need for change relative to time various issues which brought the children into care, as well as the ongoing issues which were responsible for the children remaining in care Nonetheless, given the level and extended nature of services provided to father (and this family) in this action, with regard to this failure in services the court is not of the opinion that the same should be (in and by itself) determinative of time outcome in this case The Court also notes that this Court found Mr Lloyd's testimony to (at best) be unreliable and/or incredulous The Court finds Mr Lloyd's testimony regarding his August 1, 2006 report, which was in direct contravention with his testimony to be disconcerting, as well as his unilateral decision to ignore information provided as to father's prior diagnosis of OCPD, simply because he didn't see symptoms of this problem in the disclosures provided by father The Court further notes that father admitted that he was familiar with the DSM Clearly, father once aware of a diagnosis, and being a medical doctor, could choose to avoid disclosures which might tend to support a diagnosis of a particular problem, as he continued his pattern of behavior intended to portray himself in the best light while he constantly tried to undercut mother and minimize his responsibility for the conditions which brought the children into care

and financial stability. The mere fact that father is (and/or was) employed as an oncologist, does not (in and of itself) demonstrate financial stability.

- Father commenced treatment with Dr Gonzales for OCPD in June, 2005, but unilaterally terminated this treatment in July, 2005.

Despite completing various service requirements, of key concern to this Court is the extent to which each respondent has individually benefited from the services provided

With regard to father, areas which indicated that he has failed to benefit from the services provided included, but were not limited to, father's continued discussion of issues relating to the case with the children, as well as his failure to preclude other members of his family from discussing such issues with the children, all of which was in direct contravention of specific orders of the Court prohibiting such conduct. Of further concern was his conduct, during parenting time, which indicated that he might lack the ability to provide a nurturing environment for the children Father's decision to tape record extended visits with the children certainly calls into question his decision making ability, as he failed to consider the impact that such conduct could have upon the children. Father's inability to dispose of items, correct deficiencies in the home (on a timely basis) and place the need to support the children over the need to retain worthless things is still disconcerting But, more importantly, father's repeated and continued use of physical and/or corporal punishment (such as grabbing Charlie's arm [which resulted in a referral to CPS], father's continued use of "crabbing", and an incident during the course of

supervised parenting time when he forcibly placed a child in a chair as a form of punishment) raise considerable concern over the extent to which father has been able to benefit from the services that had been provided to him throughout the course of these neglect proceedings. All of these concerns are then further buttressed by the opinion of Dr Stulberg that without father's acknowledgment of how his conduct contributed to or otherwise caused the children to come into care, the chance for recidivism remains great.[33]

Although father completed all of the classes, appeared timely for all of his visitations and was able to improve his scores from his pro-test to his post-parenting class test, concern continues to exist as to father's ability to (and the overall extent of) his benefit from the services rendered.

Again, as already indicated above, much of the Court's concerns relative to the extent of benefit derived by father's participation, stems from father's inability to accept any responsibility for the situation he and his family found themselves in. When confronted by his children about damaging behaviors in which he had engaged, father was found to be dishonest, dismissive and tended to minimize both the

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[33] Also of some concern was father's failure to disclose and, therefore, otherwise address his own behaviors which brought the children into care Instead, it now appears from the testimony of Ian Lloyd, that father continued to place the blame for the family's "disengagement" upon mother, and portray himself as a passive victim of her mental illness which lead to his inability to address the children's needs As a result, the underlying "active" behaviors of father which contributed to and/or otherwise fostered some of the problems which lead to the children being brought into (and/or remaining in care over an extended period of time) could not be appropriately addressed through individual therapy

behavior itself and the adverse impact it had had on the children.[34] This was extremely upsetting to the children Father also had unrealistic expectations and little insight of the potential benefit of integrating suggestions made for improvement into his actual functionality with the children as well as the risks associated with his failure to do so He appeared to believe that if he merely went through the required steps that everything would be fine, as opposed to recognizing the need to identify and rectify behaviors which led to the need for the children's removal.

During the initial period of family therapy, father set up obstacles and other road blocks to progress. He filed complaints regarding Dr. Stulberg, alleging a HIPPA violation (as opposed to addressing his own behavioral issues) [35]

Ultimately, father's HIPPA violation complaint was dismissed, and father's conduct only inhibited his own compliance and/or ability to benefit from the advice and assistance which Dr. Stulberg

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[34] See People's Exhibit 8 and testimony of Dr Stulberg

[35] The Court notes that DHS specifically selected Dr Stulberg (from the preferred list of professionals) because father had expressed concerns regarding religion (and wanted someone Jewish), and because they were attempting to accommodate father's requests relative to educational level for the therapist selected (and Dr Stulberg was both Jewish and had a PhD) The allegations regarding the HIPPA violation were filed by father on or about June 15, 2006, but ultimately determined to be unfounded Interestingly while father complained about the presence of a CASA worker at the initial goal setting meeting with Dr Stulberg (which formed the basis of his HIPPA violation allegations), he later requested that the Court re-appoint a CASA representative and permit that representative to attend therapy sessions (which request was denied by order (dated March 12, 2007)

was attempting to provide for the benefit of the minor children

Father constantly pointed his finger at others, as he tried to place the blame for the family's predicament at the feet of others. Throughout father's testimony he minimized his own behaviors and conversely attempted to interject narrative answers which attempted to place the blame for the family's predicament on others. Father's failure to accept responsibility and modify his own behavior jeopardized father's ability to change and/or address issues in order to avoid their reoccurrence. As a result, during parenting sessions problematic behaviors would reappear Some of these troubling behaviors included, but were not limited to, father's use of physical force to make Charlie sit down for a time out even while still engaged in supervised parenting at St. Francis), despite having been told that given the reasons that the children came into care, no physical force could be utilized to discipline the children, as well as a situation where father grabbed Charlie by the arms, such that a CPS report was issued. Also of note to the Court was that father's response to the incident was to attempt to place the blame for the incident upon the children and to make them feel badly for having disclosed the situation. Consequently, rather than taking responsibility, father made the children feel as if they were the ones to be blamed for the family's situation. This behavior continued in both direct and indirect ways. Not only was it demonstrated by direct comments to the children (such as the case with the disclosure by the children regarding the above referenced altercation), but also in his punitive conduct toward Charlie (who was the most vocal of the children regarding

father's assaultive behavior) in the implementation of a point system.[36]

Father has continually attempted to undercut the Court system and degrade mother, in his attempts to place blame on others Additionally, he has continued to and repeatedly discussed the case (in front of the children) in inappropriate ways (in direct violation of this Court's orders).

From April 27, 2006 until July 20, 2006, father refused to participate in family therapy and during this period he simply didn't show up for the appointments. This was particularly upsetting to the children. Additionally, during this period, he told the children that he was "getting Dr. Stulberg off the case".[37] At another time (in the fall of 2007) he informed the children (in an attempt to undercut their therapeutic relationship with Dr Stulberg) that Dr. Stulberg had lied and that he had proof (which he had himself authored) of such conduct. He further attempted to convince the children that the reason that they were removed from his care was for the State's financial gain (and not because he had done anything wrong) because the foster care system makes $45,000 for each child they take.[38]

Even during the course of this trial, father attempted to place blame upon others, as opposed to

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[36] See People's Exhibit 8, report dated January 26, 2007

[37] Jody Romeo-Perez testified that father tried, at various times, to have both Dr Stulberg and the CASA worker assigned to the case removed

[38] As a result of this conduct father's parenting time was suspended The Court notes that during the course of these proceedings, father attempted to place the blame for his inappropriate conduct and violation of prior court orders on Dr Stulberg and Marvin, who is one of the minor children

accepting any responsibility [39] Issues raised regarding the children's difficult behaviors, although being acknowledged as troubling and problematic, are not the focus of these proceedings. Rather, what is of concern to this Court is whether respondent(s) can correct their own past unacceptable negligent and damaging behaviors so that they can take an active and appropriate parental role in their children's lives

Throughout those proceedings father continued to deny that he ever engaged in assaultive behavior. This is juxtaposed against a record that is replete with testimony regarding (and reports of) such conduct having been engaged in by father As to conduct he didn't directly deny, father continued to place blame on others for the situations or otherwise minimize his conduct. In this regard, Dr Stulberg testified that when father was confronted by the children with having "pad-locked" the refrigerator, his response was "so what was the color of the padlock?" While having denied the occurrence during the family therapy session, he admitted to having once done so during the course of the trial.

When father was confronted by Hannah at his having removed all of the light bulbs from light fixtures in her room, and having closed her in the room while ignoring her cries, father had merely responded that "he wasn't aware that she was afraid of the

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[39] The Court notes that such behavior appears to permeate other areas of father's life In his bankruptcy proceedings, father certified that his petition for relief was accurate Later, in pleadings dated November 10, 2006, he claims that the omission of assets valued at in excess of $70,000 was not his fault, but instead the fault of his attorney. This theme is reiterated by father in an additional motion in the bankruptcy proceedings dated December 1, 2006 See People's Exhibit 12/ Defendant Exhibit H

dark" Yet during the course of the trial, he denied having engaged in such conduct.

Throughout the course of the family therapy, Dr Stulberg asked father to supply her with proposed "family rules". Father didn't do this until December 12, 2006 Father now contends that he felt he was appropriate in delaying submission of the family rules because he wanted to formulate them with the children. However, father fails to understand or acknowledge the consequences of his conduct and the impact that such delays may have had in delaying progress with therapeutic interventions

Father's repetitive conduct in tending to minimize and explain away his problematic behaviors clearly indicates that he fails to comprehend the gravity of the behaviors and the adverse impact they have had upon the children, which therefore increases the likelihood that such behaviors will be repeated. In this regard, Dr Stulberg reported that:

> . I am extremely concerned that David has taken very little responsibility for his abusive and neglectful behavior, and continues to do so. Without taking responsibility, understanding the behavior and how it developed, showing remorse, learning new skills, fine-tuning and then testing these new skills, there is a good chance that the behavior will continue once the honeymoon period is over with the children and they test his patience, authority and parenting on a consistent basis Indeed, it took only a 12 hour visit where there was an altercation between Hanna and Charlie for Dr. Eilender to use physical force Based on the above men-

> tioned concerns and lack of change in insight, responsibility and behavior there is a high probability of recidivism
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> People's Exhibit 8, Report of October 26, 2006.

Not so dissimilar from mother, father also placed the children in a parental responsibility role. Where mother placed the children in the position of having to parent each other as well as her, father placed the children in a position of responsibility for each other. In this regard, father placed the children in the position of having to be responsible for determining whether Lillian was buckled into and/or otherwise stayed in her car-seat. Often, his attention would be directed to Lillian, and it appeared that she was the only child with whom he could engage in a loving and spontaneous interaction during the course of visits, yet she was the child with whom he evidenced the most problem in establishing and maintaining appropriate boundaries

With regard to the issues of environmental neglect, father had considerable difficulty in acknowledging his contribution to (the deplorable) condition of the home (and in fact continues to refuse to accept responsibility for the same) Despite having the children removed from his care in May, 2005, he acknowledged that he was unable to part with at least two storage sheds of items, despite such items having had no sentimental or monetary value.[40] Based upon the testimony presented, it is clear to the Court that the condition of the garage, tool shed, areas of the basement, the study, and upstairs bed-

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[40] As indicated elsewhere in this Opinion, father paid a considerable sum to continue to store such worthless items during a period when he claimed an inability to provide financial assistance for the benefit of the children

room were clearly attributable to father, as were the various failures to repair certain problems in the home

In April, 2006, after mother had been absent from the home since February, 2006, the home was still found to have broken windows, the toilet (which hadn't been repaired even before father left the home in October, 2005) still wasn't repaired, significant amounts of trash were found to be present in both the home and the garage, repairs were not effectuated to the kitchen floor, and the floors (having been cleaned in preparation for the children's return in July, 2005) were again in significant need of attention. Additionally, the paint issues and drawings on the walls that existed before the children were removed in May, 2005 still had not been remedied, the kitchen was in need of cleaning, laundry needed to be done and clothing put away for the children's benefit, smoke detectors needed to be put in operating order, and clutter still needed to be removed from various areas of the home (and particularly the garage)

By August, 2006 some improvements to the condition of the home had been effectuated, but the issue of clutter and problems associated with the hazardous level of items in with the garage (which was clearly attributable to father) remained at issue.[41] In August, 2006 two screens still hadn't been fixed (and the reports reflect that father only proceeded to fix them while the assessment was being done).[42] Despite repeated reminders of items which required attention as of October 14, 2006 (although progress had been made), numerous areas of concern (which

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[41] Which included (as reflected in father's bankruptcy pleadings) two inoperable vehicles

[42] See People's Exhibit 6.

had been brought to father's attention as requiring repair before a recommendation for the return of the children could be made) still had not been taken care of by father [43] As of the final home assessment, Ms Smith (of St Francis) felt that the garage was still in such a hazardous state that she would no longer conduct assessments of its condition out of concern for her own safety in doing so.

Dr Gonzales (who is not only a psychiatrist and psychoanalyst, but also father's witness) testified that in June, 2005 he diagnosed father with a personality disorder Father was apparently referred to Dr. Gonzales by father's counsel in this case Dr. Gonzales testified that father has Obsessive Compulsive Disorder ("OCD"), with other traits, rising to the level of being a personality disorder which makes treatment difficult. Dr Gonzales shared this opinion with father and told him that it would take a considerable period of time in order to treat father's OCD Father was advised by Dr Gonzales that he needed help and also needed to take action, but father was paralyzed and unable to take the necessary steps to rectify his behavior because he couldn't organize himself to take action.[44]

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[43] See People's Exhibit 6, October 14, 2006 report which still outlines three areas of concern before the return of the children could be considered The Court notes that by this time, mother had been absent from the home for almost 8 months (and well over 182 days)

[44] The Court notes that while the referral to Alpha Counseling referenced the concerns regarding father's diagnosis of OCD, father failed, refused and/or otherwise neglected to disclose to Ian Lloyd that he had been so diagnosed or otherwise sought treatment for such disorder, or to indicate that its believed this to be an issue which Mr Lloyd would address, given the fact that father had terminated treatment with Dr Gonzales on the stated premise that he would be undergoing court ordered indi-

Dr. Gonzales described father as a person with very little insight, who was often surprised when things happened because he could not see how his participation or actions caused things to happen. Given that lack of insight, he was unable to take responsibility for things that happened During the period that father treated with Dr. Gonzales, father made no progress.

Dr. Gonzales also described father as a person who must keep all things under control and has no capacity to address emotions. Dr. Gonzales opined that addressing father's OCD would be a long process, as his disorder represented a long standing way of functioning for father He described the characteristics of father's disorder as being so deep-seated that they even impacted the way he would get dressed If you changed the order in which father was to get dressed, it would create panic and moving items would create anxiety.

Dr. Gonzales also testified that father had problems with changes in routine, which would make parenting five children "tough" He described father as a person who lacked flexibility to address children's needs, because he would become preoccupied with the details and unable to see the big picture [45]

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vidual therapy As a result, father's dismissive and manipulative behavior in failing to openly acknowledge and address underlying problems made father his own worst enemy, which essentially inhibited his ability to derive the necessary level of benefit from the treatment being provided

[45] Dr Gonzales' opinion in this regard is in direct contravention of that opined by Ian Lloyd, wherein Mr Lloyd felt that father had the ability to learn and respond flexibly Since the Court found Mr Lloyd's testimony not to be credible, the Court concludes based upon all of the other testimony and evidence presented in this case, that Dr Gonzales (and not Mr Lloyd) was

Dr Gonzales testified that, in his opinions father would need close supervision to parent his five children, and he would need in-home therapy, because it would be like teaching him to walk again.[46] Dr Gonzales felt that although father had the desire to parent, he didn't have the ability to parent and would need significant assistance in learning the necessary skills to do so. In essence, father would need treatment for his OCD as well as significant coaching, in the home, to learn to parent his children In Dr Gonzales' opinion it would take years of therapy to address father's OCD issues, and at a minimum one year of therapy. Despite father being advised by Dr. Gonzales (a physician which father sought out and treated with) that treatment would be a long process, father ended his contact (and treatment) with Dr Gonzales after only seven sessions.

During the course of his treatment of father, Dr Gonzales indicated that father never gained insight into how his conduct might have contributed to the situation in which the family now found itself, nor did he ever acknowledge (or otherwise indicate) that he was abusive toward his family in any way [47]

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correct in his assessment of father's inability to be flexible and to effectuate true change Moreover, Mr Lloyd did acknowledge that if father had an obsessive compulsive personality disorder, that such a trait would not make him amenable to treatment and at best would require long term treatment to address the same

[46] Again, the Court refers back to the testimony of Ms McCauley, whom noted that during the period that such services were being provided, father essentially chose to absent himself from such services, choosing instead to work long hours and voluntarily not be present in the home when the services he so needed were being rendered

[47] Although Dr Gonzales tended to doubt that father would have been able to assert himself to even take physically abusive action Following this treatment, father failed, refused and/or

The Court notes that it found father's testimony (which was in direct contravention of the testimony presented by Dr. Gonzales) not to be credible, particularly the Court does not believe father when he testified that he was never provided with any notice of an OCD or OCPD diagnosis

Mr MacIntosh testified that the form of OCD suffered by father would be particularly difficult to treat because persons with OCD, with narcissistic tendencies, don't feel they have any problems. This appears (from all of the testimony) to be especially true of father

The Court finds it noteworthy that father indicated to Ms. Winter-Long, at the commencement of his individual therapy through Oakland Family Services, that he was then still receiving therapy through Dr Gonzales for (situational) anxiety During his intake interview, not only was father less than truthful about the reason for and period of treatment with Dr Gonzales, but he also failed to disclose information regarding his diagnosis of obsessive compulsive personality disorder as well as many other facts which might have permitted Ms Winter-Long to address the underlying causes that led to the children coming into care (environmental

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otherwise neglected to address or otherwise acknowledge that his use of physical discipline and/or domestic violence could have been a contributing factor to the removal of the children from his (and/or the parents' care) when undergoing individual therapy with Ian Lloyd Therefore, because of father's failure to honestly address or disclose information to Ian Lloyd, the plan which father developed was not reality based, and tended to exhibit father's belief that if he could simply remove mother from the care plan (via divorce) the problems which brought the children into care would simply evaporate

neglect being merely a symptom of the parties' more deep-seated psychological and emotional issues).[48]

The Court also notes that although certain of father's debts were discharged from bankruptcy on or about April 16, 2007, father (throughout these proceedings) failed, refused, or otherwise neglected to provide DHS with evidence of the bankruptcy and/or his income, in order to establish his ability to provide financial stability and support for the children Father's current earnings, as testified at trial, are not material to the determination of whether, at the time of the supplemental petitions father had maintained financial stability.

More important to the analysis of whether an ongoing potential for neglect exists, is the fact that father has failed, refused and/or otherwise neglected to provide for and/or otherwise support the children during the course of these proceedings Despite numerous orders of the Court, by father's own admission (as contained in his December 1, 2006 Motion to Voluntarily Dismiss Chapter 7 case or, in the Alternative, to Convert Case to Chapter 13[49]) he admits that he failed to pay (as of that date) $19,361.92 in Court ordered reimbursement (support) for the minor children, as reflected on Exhibit B, Schedule E, to his Amended Declaration Concerning Debtor's Schedules.

Concerns raised as to the benefit that mother derived from the extensive services provided to

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[48] Ms Winter-Long acknowledged that because their treatment model was primarily based upon self-reporting, the ability to benefit from such treatment turns on the extent to which a person (accurately) discloses Again, and although she indicated that third party information might be helpful, beneficial therapy really hinges on the clients ability and need to recall and acknowledge problems in order to adequately address them

[49] People's Exhibit 12

mother occur on multiple levels. Mother had a great deal of difficulty controlling herself and refraining from discussing the case and/or making comments about the case (or father) within earshot of the children, despite orders of the court precluding such behavior. It was not uncommon for mother to have a great deal of difficulty separating from the children, and she often became tearful and clingy, so much so that she would create scenarios where the children were encouraged to have to take care of her, as opposed to her engaging in behaviors that set her apart from the children and placed her in the role of a parent

From February 24, 2006 until April 3, 2006, mother did not attend any parenting time visits with the children. During this period, there were at least three visits which were scheduled, for which mother failed to call and failed to appear This conduct often scared the children, who then would worry about mother's safety

When mother was referred to Impact, it took a considerable period of time for her to comply with and attend those counseling sessions Between October, 2006 and January, 2007, mother attended 10 out of the 11 scheduled impact sessions, and from January, 2007 until March, 2007, she only attended one such session

During the period from January, 2007 until March, 2007, mother was to see A.J. Kitchen for individual therapy. During this period, no progress by mother was reported to have been made. In March, 2007, Sydney Smith (of St Francis) was finally able to make contact with mother's psychiatrist, Dr. Dabbagh, who although having treated mother since February, 2006, was then still unaware that mother had five minor children for whom she would be responsible for care

With regard to the requirement that mother obtain and maintain suitable housing, the Court notes that from February 23, 2006 until August 14, 2006, mother essentially had no housing. During this period she was either being treated in in-patient residential care, lived in her car, or lived at various domestic abuse shelters. Although mother was able to secure an apartment in August, 2006 (with the assistance of one of her adult children), as of August 24, 2006, mother had not obtained the necessary furniture and furnishings to provide adequate housing for the children in that apartment

Moreover, when St Francis attempted to conduct home assessments, three of these assessments were cancelled by mother On the occasions when St Francis could access the apartment to conduct an assessment, mother was still having difficulty keeping areas from getting cluttered.[50] After residing in the apartment for approximately eight months, mother moved to a hotel, which again placed her in a position of being unable to provide adequate housing for the children

Although the Court acknowledges that it took a considerable period of time for mother to obtain and receive support from father, it also notes that the stated goal was for mother to be able to obtain employment that would at least provide her with a sufficient income to provide for some of the children's most basic needs. From the records and testimony presented, it doesn't appear that mother was ever able to achieve the level of mental or emotional stability necessary for her to obtain (and maintain)

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[50] Sydney Smith testified that the closets had become filled with clutter to the extent that they were filled from the floor to the ceiling and there would have been no place for the children to then place their clothing and belongings

such employment. Also of some concern to the Court is that when she did obtain employment running errands for a woman who suffered from a closed head injury, the disabled woman was then placed in the position of having to help mother out financially and emotionally. As was so often demonstrated during the pendency of the case, this employment further reiterated mother's *modus operandi* of placing those for whom she had assumed a position of responsibility of care, in the position of having to care for her

On a positive note, during the course of family counseling mother (unlike father) was able to accept responsibility for her neglectful behavior, including her alcohol abuse, eating disorder, putting the children in the middle of her marriage, boundary and personal space issues that forced the children to be the adults and manipulative behavior including whispering to the children during sessions to encourage them to tell Dr. Stulberg of father's abusive conduct However, mother often had to be repeatedly reminded to discontinue many of these behaviors (even after acknowledging that they existed and the damage they had caused) as such behaviors resurfaced during the course of the very same sessions Although, at times, mother would make progress in setting and respecting boundaries, she still had considerable difficulties even when receiving direct supervision and input from professionals[51] Further, although mother was thought to have made considerable progress in learning to define her role as a parent and to differentiate herself from the children,

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[51] On October 16, 2006, some five months after family therapy was commenced, mother was still upsetting the children by sharing information regarding a medical condition for which she placed blame upon father during the course of family therapy sessions See People's Exhibit 7

during the period of November 7, 2006 until January 9, 2007 mother again exhibited other disturbing and disconcerting behaviors

It was during this period that mother made a false police report regarding father which behavior ultimately resulted in her conviction for the false reporting of a misdemeanor[52] and she also committed perjury relating to testimony regarding father's actions (resulting in a conviction in the 6th Judicial Circuit Court)[53] Mother testified (and attempted to justify her behavior) by indicating that she specifically falsified charges against father to keep him from having parenting time with the children. In mother's mind her behavior was justified as she was engaging in the same for the protection of her children

Although mother progressed to the point that she was allowed unsupervised visits (when she was able to demonstrate some ability to withhold certain information from the children), mother remained so emotionally fragile and unstable that all visits (even those that were unsupervised) continued to occur at St Francis, so that emotional support and parenting assistance could be provided, as needed, throughout the duration of these visits Often mother would admit to workers, following a visit, that she still didn't feel confident in her ability to control the children, and mother even testified that she still believed that foster care was providing better care for her children than she could provide Mother's behavior, at various times, was reported to be erratic. On one visit the staff believed mother to have been intoxicated, and on other visits she arrived late or not at all. Although there were periods of marked progress

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[52] See People's Exhibit 9

[53] See People's Exhibit 10

(where mother's conduct was appropriate and she was punctual and appropriate) there were other periods were she appeared to digress and be unable to generally function in an appropriate manner.[54]

When Dr. Stulberg witnessed mother's behavior and demeanor during the course of family therapy (in April, 2007), she noticed a marked difference in mother's affect, and Dr Stulberg indicated that mother was often (again) tearful and functioning at a significantly reduced capacity (from that which she had exhibited in January, 2007) Dr. Stulberg further testified that after April 30, 2007, mother's compliance became problematic, and she failed to appear at therapy meetings without any forewarning.[55]

During mother's July 8, 2007 visitation with Lewis, mother (who had recently undergone the removal of her wisdom teeth), inappropriately told the child that father had knocked her teeth out, it was during this very same visit that mother told Lewis that father had burned her and in the past tried to put her (and on an earlier occasion Lewis) in the oven.[56] Although Lewis was able to write the incident

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[54] The Court notes, for the record, that it personally witnessed such fluctuations during the extended course of these proceedings, where mother would at times exhibit her inability to even control herself within the confines of the Courtroom setting

[55] The Court also notes that on September 7, 2007, it limited mother's visits with the children to supervised visitation, after she exhibited inappropriate conduct during the course of visits with the children, and she was thereafter required to provide proof of compliance with her prescribed psychotropic medications, on an ongoing basis, which she failed to do

[56] While it is reported that Lewis didn't believe mother's assertions regarding father trying to burn them by putting them in the oven, clearly these representations by mother (which did anger Lewis) are problematic and demonstrate the extent to

off and attribute it to his mother's mental illness, the fact that it occurred and that mother told him not to tell anyone (because she would get into trouble), is in and of itself troubling As a result of such inappropriate conduct and false representations by mother (which were upsetting to the child), mother's parenting time was (again) suspended by order dated July 25, 2007.

Concerns over mother's veracity, overall self-destructive and damaging conduct were again raised during the course of her own testimony when she indicated to the Court that she had lost her transportation when "the police took the plate away because I stole at Kroger's".

While it is evident from the testimony presented, that mother is a very loving and caring person who adores all of her children, it is equally evident that even during periods of progress, mother was unable to demonstrate sufficient parenting skills to permit her to effectively parent the children over a prolonged period of time Various issues which would place mother under stress, directly impacted her ability to function as an individual, let alone handle the responsibilities associated with parenting five minor children Clearly, if the test for retaining parental rights was solely love based, mother would pass with flying colors, but it is not It is abundantly apparent to the Court, however, that mother's inability to get her mental health issues under control continues to place her ability to function (let alone parent) in jeopardy.

Although Mark Miner testified that he was proud of his mother because of how she had gotten stronger, more assertive and hadn't given up; Dr.

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which she lacks insight into how such conduct could be injurious to her children

Dabbagh testified that he was surprised that mother hasn't had to be re-admitted to the hospital or attempted to commit suicide, given the amount of stress she is currently under [57]

Dr Dabbagh acknowledged that while mother did gain some stability during the first one and one-half years that he was treating her, he also acknowledged that over the more recent past she has mentally become fairly unstable. Dr Dabbagh testified that mother faired better when she was able to see the children, and that there has been a decrease in her mental health since her rights to see the children had been curtailed and her divorce has been finalized He indicated that mother is a "very sensitive and fragile" person whose mental status is significantly impacted by all forms of stress Presently, the loss of her identity as both a wife and a mother were acting (in the doctor's opinion) as significant stressors for her. This results in mother being unable to make appropriate social judgments and also results in a decrease in her ability to sleep as well as an increase in her depression and anxiety levels.

Again, unfortunately for mother, the focus in these proceedings is not on the Court doing what is best for her, but what is best for the children, given all of the services that have been provided and the considerable period of time that the children have now been under the temporary jurisdiction of the Court

Although Dr Dabbagh testified that mother could regain the capacity to care for herself if stressors were eliminated, he also testified that it would take continued and ongoing support being in place for mother in order for her to be able to parent the

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[57] And, in fact, mother was shortly thereafter again hospitalized

children. Dr Dabbagh agreed that mother requires ongoing treatment for all of her issues, life management, anxiety and depression He felt that mother would need additional and on-going case management in her home, in addition to individual therapy He cautioned, however, that individual therapy could (at times) be detrimental as it might act to reinforce mother's feelings that she was a "victim" by making her focus on the traumas she has undergone Dr. Dabbagh testified that mother needs more than just medication therapy Some other aspects of therapy which he felt would be important to mother would be exercise, nutrition, cognitive therapy, social interaction, training in logical thinking and relaxation However, the Court also notes that throughout these proceedings Dr Dabbagh input was sought (via his provision of treatment records and recommendations) but he consistently failed, refused or otherwise neglected to provide the same

Interestingly, Dr. Dabbagh further testified that for mother there was no ideal treatment that (could or) would assist her

MCL 712A 19(b)(5)

Having found that jurisdiction was merited and appropriate, MCL 712A 19(b)(5) makes termination mandatory if the petitioners establish a statutory ground for termination under subsection 19(b)(3), and this eliminates the need for efforts toward reunification, unless the court finds that termination is clearly not in the child's best interest See *In re Trejo*, 462 Mich 341 (2000) The rationale behind these mandatory provisions is the balancing of policies favoring the preservation of the family unit and that of protecting a child's right and need for security and permanency. *In Re Trejo, Id*

The co-petitioners bear the burden of proving, by clear and convincing evidence that at least one ground for termination exits. See *In re Sours Minors*, 459 Mich 624 (1999)

As noted by counsel for mother, clear and convincing was defined, In *In re Martin*, 450 Mich 204 (1995) to be evidence which:

> "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue " ... Evidence may be uncontroverted, and yet not be "clear and convincing." Conversely, evidence may be "clear and convincing" despite the fact that it has been contradicted.
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> (Internal citations omitted).

In addition, the Michigan Standard Jury Instructions define this standard of proof to require.

> " . that the evidence must more than outweigh the evidence against it. To be clear and convincing, the evidence must satisfy you that the proposition has been established with a high degree of probability.
>
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Consequently, the Court was cognizant of this stringent burden of proof, which the People were re-

quired to meet, when it listened to and assessed the evidence presented during the course of this trial, and in arriving at a determination of whether the statutory requirements for termination had been established.

MCL 712.19b(3)(c)(i)

> *The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following (c) The parent was a Respondent in proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the courts by clear and convincing evidence, finds either of the following. (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.*

As more specifically set forth above, respondents' minor children came into care on or about May 20, 2005 and the Court found jurisdiction over the children existed on July 29, 2005 when the respondents plead no contest to the allegations contained in the initial petition.

While father argues that he only plead no contest to environmental neglect, the record reflects otherwise, and again the Court reiterates that the record clearly reflects that Referee Hand advised respondents that the underlying problems which brought about the situation, and resulted in the

children being taken into care, still needed to be addressed.

The records and files of this case, together with the testimony presented in the within cause demonstrate the extent to which DHS went to provide services over and above those which the Court generally sees in reunification cases. In addition, numerous extensions and additional services continued to be layered on this case, as every available effort was made in an attempt to facilitate reunification of these five minor children with (at least one if not both of) the respondents

Father's failure to accurately and fully disclose the purposes and status of his treatment with Dr. Gonzales certainly didn't help (and may have actually slowed) the process of father's treatment for one of the underlying causes that brought these children into care.

It is clear from the record that father was fully aware of his diagnosis and the need for him to obtain treatment for his obsessive compulsive personality disorder. Because of the acute nature of his problem, he was asked to find and provide DHS with the name of the doctor with whom he would and/or wished to treat for his OCPD. The record is replete with instances where father failed to disclose and/or misrepresented the nature and status of his treatment with Dr. Gonzales or that he had unilaterally ceased treatment with Dr. Gonzales after only seven sessions [58]

The Court again notes that Dr. Gonzales was one of father's own witnesses in this case Dr Gonzales' testimony that father's deep-seated problems

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[58] Moreover, father failed to disclose the deemed need for treatment in this area to Ian Lloyd during the course of his individual therapy sessions

with OCD would require years of treatment, and these problems had not been resolved during the course of their limited seven sessions of treatment, buttress the Court's belief that father's underlying issues will not, and cannot now be resolved within a reasonable period of time considering the age of the children.

Although the evidence substantiates that both parents were responsible for the environmental neglect of the parties' abode (which brought the children into care), as well as the efforts which each of the parties made to remediate the deplorable state to which the home had fallen before the children were removed, what is key is that without addressing the underlying psychiatric and psychological problems suffered by each of the respondents, the home was doomed to digress to the same state within a limited period of time.

This is substantiated by father's failure and/or inability to part with things which he acknowledged had no sentimental and/or financial value, which he felt compelled to store and keep at a considerable financial cost It is further demonstrated by his inability or unwillingness to clear the garage, which he was repeatedly told was a potential hazard to his children and which conduct was required in order for the children to be returned to his care, and/or to repair areas of the home unless he was repeatedly reminded and oversight for the needed repairs was provided during the inspection of the property. Consequently, it is also clear that if the children were to be returned, it is foreseeable that father would again become overwhelmed to the point that deterioration of the property would predictably occur

Although on the surface things appeared better (in the summer of 2005), it is eminently clear to

this Court that surface repairs did not remediate the underlying problems which were hazardous to these children and their health.

As indicated above (in the time line of events leading to the filing of the supplemental petition), father never truly accepted responsibility for the condition of the home and he failed, refused and/or otherwise neglected to move forward (on a timely basis) with correcting the physical (let alone the underlying psychological) problems which (continued to) lead to the environmental neglect.

It is also abundantly clear from the evidence presented that mother lacked the wherewithal to independently deal with the clean up and removal of clutter to the home Although she enlisted the assistance of others, she was unable to care for herself, let alone deal with maintaining the physical requirements of maintaining an abode (financially or physically), given her limited psychological resources during periods of stress and/or emotional turmoil. It is clear that mother's inability to maintain emotional and mental health stability adversely impacted her ability to remedy the underlying problems which led to the removal of the children for environmental neglect Although testimony of the witnesses (other than father) evidenced that the home did not deteriorate substantially during the period that she resided alone in the home (from October, 2005 until February, 2006), the Court also notes that substantial services and outside assistance were being provided to mother in order for her to simply be able to cope during this period of time and things would quickly deteriorate during periods when her mental health was in a fragile state.

Mother's failure to cure the underlying causes leading to the environmental neglect are buttressed by the fact that once she was able to move

into a new abode (in August, 2006), this apartment also quickly accumulated clutter, as the closets became engulfed with items to the extent that if the children were returned to her care, there would be no place for them to store their own clothing and belongings.

Also of significant concern to the Court, were the allegations contained in the initial petition relative to physical abuse and mother's precarious mental health status.

Mother has significant mental health problems. Although there were periods during these proceedings where marked improvement in her mental health status was noted, by February, 2008 her mental health had deteriorated to the point that she attempted to commit suicide, while the children were present and in her care. Following this incident, mother's mental health has fluctuated, but never become stable enough for her to fully regain the ability to care for herself and/or the children She has required at least three hospitalizations for in-patient treatment since February, 2006 During a considerable period of time Mother has been unable to obtain and maintain satisfactory housing for herself, let alone the children. Further, following February, 2006, mother has been unable to maintain mental health stability and has repeatedly demonstrated erratic and bizarre behaviors that have inhibited her ability to comply with services and/or reach a level of stability where even parenting time could be exercised outside the presence of service providers Even during periods when unsupervised parenting time was permitted in this case, mother's confidence in her parenting skills was so fragile that such visitations occurred at St. Francis so that assistance and reassurance could be provided Nonetheless, as mother's mental health issues escalated, her ability

to engage in appropriate behavior when with the children deteriorated This lead to missed parenting time, mother missing sessions for services which were being provided, and more importantly incidents where mother told the children bizarre stories regarding father's conduct (such as putting her and Lewis in the oven to burn them and blaming wisdom teeth extractions on father having punched her teeth out)

Father was also unable to control his anger and provide appropriate boundaries for the children, following completion of parenting and anger management classes. This was demonstrated by his inability to engage in supervised parenting without resort to use of physical force, his inability to control Lillian during parenting time, his resort to inappropriate dialogue with the children (which placed the blame for the children having come into care either on mother, the system and/or the children) as well as his failure to acknowledge the extent to which he was responsible for such situations. Father's conduct has resulted in him being unable and/or otherwise unwilling to address the underlying causes which brought the children into care (despite extensive services having been provided)

When the neglect petition was initially brought before the Court, it was stated therein that the family was under financial constraints and hardship. Throughout these proceedings father failed to address these issues, and failed, refused and/or otherwise neglected to provide DHS or the Court with evidence that he had rectified the financial situation such that he could provide a stable environment for the children within the foreseeable future. Quite to the contrary, father has failed to pay the required reimbursements for the children during periods that they have been in care, often failed to update and

provide proof of medical insurance for the children, and even during the periods when the children were in his care (and/or mother's care) generally failed to provide financially for their most basic needs

Petitioners have, therefore, met their burden, by clear and convincing evidence, demonstrating that significantly more than 182 days have elapsed since the issuance of the initial dispositional order in this case and, further, that the conditions that led to the adjudication in this action continue to exist, and that there is no reasonable likelihood that many of these conditions will be rectified within a reasonable time considering the children's ages

MCL 712A 19b(3)(g)

> *The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following: (c) The parent was a Respondent in proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following: (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.*

As already indicated in the recitation of facts outline above, although the Court believes that these parents wanted to correct the conditions which brought the children into care, despite the provision

of multiple services they were unable to adequately address and rectify their behaviors which lead to the children becoming temporary wards of the Court.

Mother, despite her diligent efforts to incorporate strategies learned through the various services provided, remained unable to provide care for the children (with or without significant assistance). While she remained in the marital home, others essentially provided the structure and care for the children, and significant efforts were made to not only prop up mother's self esteem and confidence in her parenting skills, but to provide her with supplemental tools and assistance Yet, even with all services in place, mother felt she had no option but to try to kill herself, so that her children could again receive the care which they needed Rather than improve to the point that she could care for the children, mother's behavior digressed, and as it did so she also attempted to manipulate the system so that father would be blamed for further physical assaults, in her attempts to "save the children" from unsupervised contact with father.

While this Court recognized that mother fabricated claims of physical assaults by father (which the Court has not considered against father in its determinations), it also notes that father was (and is) his own worst enemy. Father's own conduct, as witnessed by the various service providers, provided a clear and convincing record of conduct which demonstrated (without regard to his intent), that he is unable to and has failed to otherwise provide the children with proper care or custody and that he will be unable to do so within a reasonable time considering the children's ages.

Father's failure to acknowledge and (therefore) address his underlying personality disorder, his responsibility for the condition of the home, his ina-

bility to refrain from the use of physical force in disciplining the children, and his constant and ever present minimization of the impact that his conduct has had upon the children, have precluded him from progressing to the point that he was able to provide the children with the care and custody they needed. Father was unable to fully address the issues in the home (despite the passage of significantly more than 182 days), unable or unwilling to provide financial assistance needed by the children (while finding ways to provide the requisite finances to maintain other items of personalty), and unable to recognize and addresses the children's needs, thereby failing to provide a nurturing environment for the children Additionally, he repeatedly failed to attend to or otherwise address their financial needs Although there were periods where father appeared to progress, his failure to address and rectify underlying behavioral issues throughout these proceedings continued to put the children at risk and limited father being able to progress to the point that return of the children was possible, despite a considerable passage of time since the children's came into care and considerable services having been provided.

Moreover, neither of the respondents was able to demonstrate that they benefited from the multitude of services provided (over the significant period since the children came into care) to a sufficient level such that a reasonable expectation of return of the children could be anticipated Despite having essentially complied with almost all of the participatory requirements of the various PAAs, each of the respondents failed to benefit in various key regards:

As to Mother:

- Despite attending Domestic Violence classes, she repeatedly reverted to the role of a victim, to the extent that she was unable to provide the care required for her children.

- Despite attending parenting classes, mother was unable to parent the children away from the St. Francis facility, and while at St. Francis required continued reassurance and guidance to simply meet the demands of parenting over a limited time period (of 2 to 3 hours)
- Mother continuously reverted to placing the children (and others) in a position of having to care for her, as opposed to demonstrating an ability that she could care for them. Although she is clearly affectionate (maybe overly so), she is unable to maintain a logical thought process so that she can make responsible decisions relating to the care of the children Mother is not even able to control herself within the confines of a courtroom setting, let alone as would be required to parent five young children.
- When the children were returned to her care, she was unable to maintain them in an environment which was safe from domestic violence (either from father or each other).
- During parenting time and family therapy, mother would repeatedly have to be reminded of the rules and boundaries established for the care and protection of the children.
- Mother was unable to maintain mental health and emotional stability, which re-

sulted in multiple occasions of inappropriate and anti-social behavior, which included periods where she resumed purging, drinking, created unsubstantiated allegations of ongoing physical abuse[59], as well as the repeated need for hospitalization.

- Mother was unable to provide and maintain adequate housing for the children. She was unable to care for the children in the marital home, without substantial outside assistance. She lived in shelters, her car, and/or hotels for all but 8 months following February, 2006. When she was in an apartment (attempting to ready the same for the return of the children), she was unable to maintain the same without accumulating clutter, or to provide financially for the long term maintenance of the property
- Mother was unable to attain the mental health stability required for her to sustain even the most basic of employment, in order to provide financially for the children's most basic needs, despite knowing that father could not be depended upon to provide the same, given his past history and conduct.
- While mother readily acknowledged her contribution to the causes that brought the children into care, her inability to address the underlying reasons that the children were brought into care demonstrated her inability to correct her behaviors to the point

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[59] By citing to this, the Court does not intend to in any way degrade or undercut the actual and substantiated abuse which did occur during the period when mother and father were together

that she will be able to care for the children within a reasonable period of time,

As to Father:

- Despite multiple home visits and assessments, father was unable to remediate problems in the home on a timely basis It took more than 182 days to fix the plumbing, flooring, screens, and more specifically trash and clutter in the garage (and basement).
- Despite father's attendance of parenting classes, and improvement in his post-test score, he was unable to consistently demonstrate the skills necessary to provide the children with the necessary input and guidance, without reverting to the use of physical force even while in a supervised setting, and again reverted to the use of "crabbing" and "grabbing" children during extended parenting time visits.
- Father was to learn to develop age appropriate expectations and to display greater parent/child affection and trust, as well as to become a role model by taking responsibility for his behavior. Father was never able to demonstrate an ability to take full responsibility for behavior. Even the CASA worker who monitored later visitation session, indicated concern over the lack of affection demonstrated by father toward any of the children other than Lillian. It is clear, from the testimony of Dr. Stulberg, that there was a considerable lack

of trust evidenced by the children toward their father and a concomitant belief that father was incapable of effectuating any change in his own behaviors, such that they would ever be able to return home During periods when extended parenting was afforded to father, the older minor children were placed in responsible roles for the younger children

- Father was unable to grasp how his methods of disciplining the children were injurious to their emotional and physical well-being.
- Father was unwilling or otherwise unable to address his underlying OCPD, with narcissistic traits, which appears to be at the root of many of the problems which brought the children into care. Father unilaterally terminated his therapy with Dr. Gonzales, once the doctor informed him that no quick fix was available Further, rather than voluntarily participating in and gaining guidance from the family therapy,[60] father repeatedly placed road blocks to the effectiveness of the family therapy, by refusing to attend and then attempting to effectuate removal of the therapist, and/or ignoring any and all input provided by the doctor Even father ac-

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[60] Nor was father able to fully comprehend and disclose the need for therapy and to continue and receive the requisite level of treatment for this underlying (and potentially root problem) to other service providers such that the necessary level of therapeutic intervention could be obtained

knowledged, during the trial, that he derived no benefit from Dr Stulberg's therapy (however, he places the blame for this at her feet and at the feet of DHS and this Court, rather than accepting his own responsibility for his failure to benefit from an important services which was being provided for the benefit of his family, and which was geared toward reunification [as opposed to termination])

- Additionally, father's termination of services by Dr. Gonzales before any benefit had been derived, refusing to provide such information to DHS so that follow-up services could be effectuated and/or facilitated, and an overall denial of the problem, left father without the apparent capacity for changing his behaviors
- Rather than develop a further bond with his children, father continued to engage in behavior which pushed the children away, by minimizing their feelings and concerns, discussing prohibited items with them and/or in their presence, as well as in his blatant attempts to undercut the effectiveness of therapy by telling the children that the system would financially benefit from their removal and that the therapist whom they trusted was a liar.
- Before the supplemental petition was filed, father never provided the necessary paperwork relating to his bankruptcy proceedings, nor did he provide verification of his income or financial

situation, such that he could demonstrate his ability to provide financial stability for the children

- Of significant concern, and possibly the clearest demonstration of father's failure to benefit from the services provided to him, is his inability to take responsibility for his abusive and neglectful behavior, how the behavior developed, and an ability to show consistent implementation of new skills, such that he could effectively and consistently parent the children without resort to the very problematic behaviors that resulted in the children coming into care in the first place. Father's ongoing and unchanged lack of insight into his own behaviors and failure to accept any responsibility, continue to place the children at risk.

As indicated in *In re Gazella*, 264 Mich App 668 (2005)

> ... "Compliance" could be interpreted as merely going through the motions physically; showing up for and sitting through counseling session, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the child would no longer be at risk in the parent's custody In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement

> or case service plan For example, attending parenting classes, but learning nothing from them and, therefore, not changing one's harmful parenting behaviors, is of no benefit to the parent or child.
>
> It could be argued that a parent complied with a case service plan that merely required attending parenting classes but was silent concerning the need for the parent to benefit from them It is our opinion that such an interpretation would violate common sense and the spirit of the juvenile code, which is to protect children and rehabilitate parents whenever possible so that the parents will be able to provide a home for the children that is free of neglect or abuse.

Unlike the factual scenario presented in the cases cited by respondent father, in the instant case, significant and varied services were provided to each of the respondents with the desire and hope that through their honest and active participation in same, reunification could be facilitated. However, when the facts of the instant case are viewed in their totality, the Court is convinced that despite various, numerous and extensive services which were provided to this family, each of the respondents has failed to benefit from the services to the level necessary to rehabilitate their respective behaviors and protect the children from again being exposed to such neglectful and/or abusive behaviors

MCL 712A 19(3)(i)

> *The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following. (c) The parent was a Respondent in proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following· (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent*

The testimony of Dr. Gonzales and Dr. Stulberg provided the Court with the greatest insight into father's lack of capacity to address the issues which brought the children into care, and demonstrate the considerable and ongoing risk to the children that such conduct and issues will reoccur.

As more specifically reiterated above, Dr Gonzales (father's defense witness) unequivocally testified that father lacked insight into how his own behaviors contributed to the situation in which he (and the family) found themselves [61] His need for control, while lacking the capacity to properly ex-

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[61] Father's failure to provide sufficient disclosure to Ian Lloyd (of Alpha Counseling) also buttressed father's lack of insight into how his own affirmative behaviors (as opposed to the passive impact that mother's behaviors might have had upon him), and essentially impaired his ability to progress to eliminate the potential risk of harm to the children such that reunification would become a reasonably foreseeable

press emotions, limited his ability to make progress. Dr. Gonzales essentially acknowledged that father's difficulty dealing with any change in routine could impair his ability to effectively parent, given his inability to be flexible enough to address the children's needs as they arose Even Dr Gonzales opined that it would take upwards of an additional year of therapy for father to gain the requisite insight to rectify problematic behaviors (if not longer).

Mr. MacIntosh's testimony buttressed the depth of father's problem and potential inability to correct these behaviors, where father's Obsessive Compulsive Disorder was coupled with narcissistic traits, which made father feel that there was nothing really wrong with him. As a result, change would be difficult, because individuals (such as father) tend to feel they don't have any problems that require redress

Dr. Stulberg's testimony demonstrated that the predictions of Dr. Gonzales and Mr MacIntosh were in fact manifesting themselves in father's behavior in family therapy, as father continued to minimize and explain away his problematic behaviors, and in his failure to comprehend the gravity of or impact those behaviors had upon his children Or, Stulberg clearly and unequivocally testified (and her reports to the Court reflect), that based on father's lack of insight (and other behaviors), "and lack of change in insight, responsibility and behavior there is a high probability of recidivism".

Again, throughout these proceedings, father's propensity to digress and return to behavior models which were historically injurious to the family and particularly the children's healthy development, would he resurrected in various arenas These included the repeated use of physical force in disciplining the children, failure to provide the necessary fi-

nancial support for the children, failure to address issues of environmental neglect, failure to supply necessary information, failure to comply with recommended therapeutic interventions, as well as his constant attempts to place the blame upon others for the situation in which the family found itself

Father's inability to place the needs of the children above his own, clearly puts the children at future risk of harm should similar behaviors resurface if the children were returned to father's care [62]

Father's repeated misdirection, manipulative conduct and failure to provide accurate information, resulted in the old adage of "garbage in – garbage out" being brought to fruition

Even the children acknowledged and were frustrated by their own realizations that their father lacked the capacity to sufficiently change so as to eliminate the repeated risk of harm to them

At its core, father appears to lack the capacity to change, no matter what desire he may have to do so

This is juxtaposed against mother's capacity to effectuate change and her real desire to do so, but an underlying inability to make such change lasting in duration due to her inability to obtain and effectuate a lasting and stable mental health status Parenting children brings with it normal trials and tribulations, which in and of themselves create various levels of stress. Mother's inability to remain stable in the face of stress, due to her fragile and extremely

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[62] At one point, during closing argument, this inability was likened to respondent's inability to understand the chess strategy of sacrificing a pawn so that the overall objective of winning the game could be attained, although not evidence, the Court found the analogy to be nonetheless descriptive of behaviors testified to during the course of this trial

sensitive emotional state, make the likelihood of long lasting functionality questionable at best.

Many significant services were provided in this case, with regular (shorter time period) reporting to the Court due to the fluidity of mother's emotional and mental health status. Mother was often unable to even cope with generally accepted behavioral constraints associated with appearing in a courtroom setting Her irrational and illogical thought processes, and elevated level of neediness often placed others in a caretaking position as opposed to demonstrating a prolonged ability for her to provide the necessary guidance and care required to parent these five children.

Many opportunities were provided for mother to seek other family members to resume a supportive role in her parenting of the children without success. In addition an extremely high level of services was required while the children were either in her care or even during limited visitation periods, just to permit her to function at the most basic of levels.

Without emotional and mental health stability, mother has remained vulnerable to her deficits and unable and incapable of supporting the children financially or emotionally, and it is apparent to the Court that the children stand in considerable risk of harm if returned to her care, despite her best intentions and love for them.

CONCLUSION

It, therefore, appears for all of the reasons fully delineated throughout this Opinion, that petitioners have sustained their burden, by clear and convincing evidence, that there is a reasonable likelihood, based on the conduct or capacity of each respondent individually (without regard to or for the

behavior of the other) that the minor children will be harmed if they are returned to the home of either of the respondents.

Father, during this dispositional trial (and for the first time during the long period that this matter has been pending) raises a claim that his parental rights should not be terminated because DHS failed to provide him with sufficient and/or appropriate services The Court notes that this is nothing more than a red herring, as it is well established that the time to raise a challenge as to the nature of the services or accommodations offered in neglect proceedings is when a service plan is adopted, not at the time of the dispositional hearing to terminate parental rights. Through father's own witness (Dr Gonzales) as well as through Mr. MacIntosh, it was well established that father needed to address his OCPD, as such was a core issue which caused and/or otherwise contributed to father's behavior which brought the children into custody See *In re Terry*, 240 Mich App 14 (2000). Having failed to do so, and especially in light of the multitude of services offered in this case with the intent of facilitating a reunification of these children with their parents, the Court finds such arguments to be both untimely and without merit.

The Court also notes that while father's counsel attempted to introduce theories to support the premise that father's rights should not be terminated, the Court also notes that closing argument and statements by counsel are not evidence. While the Court found some of these positions to be creative, it also found that they were not supported by the evidence or testimony introduced during the course of the trial

The Court further finds, by clear and convincing evidence, for all of the reasons set forth above,

that at least one of the statutory grounds to terminate parental rights have been proven under MCL 712A 19b(3)(c)(i),(3)(g) and (3)(j)

Therefore, given the findings of the Court set forth in their entirety above, it is mandatory that this Court enter an order terminating the parental rights of the respondents, unless it is shown that termination is clearly not in the children's best interest pursuant to MCL 712A 19b(5) See *In re Trejo*, 462 Mich 341 (2000).

Consequently, this matter is hereby scheduled for a hearing on the Best Interests of the children on June 19, 2008, at 8:30 a.m.

IT IS SO ORDERED. June 20, 2008 at 8 30 a.m

DATED 5/7/08

/s/ Leo Bowman
Hon Leo Bowman
Circuit Court Judge - Family Division

PROOF OF SERVICE

I certify that a copy of this opinion and order was served upon the attorneys of record or the parties not represented by counsel in the above case by:

X ___ mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 7th day of May 2008;

or,

_____ by hand delivering a copy of this opinion and order upon the attorneys of record on _____, 2008 at the Courthouse located at 1200 N Telegraph Road, Pontiac, Michigan, at approximately _____ in the _____ noon.

/s/_____

APPENDIX B

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

IN THE MATTER OF MARVIN EILENDER, CHARLES HENRY NOAH ELENDER, HANNAH EILEEN ROSE EILENDER, LEW1S ABRAHAM JOSEPH EILENDER, and LILLIAN SARAH CLARE EILENDER, Minors

2005-707874-NA
Hon. Leo Bowman
_____/

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248-882-2055

OPINION AND ORDER

This matter is before the Court on the petition of the Oakland County Prosecutor requesting termination of Respondent's Dr. David Eilender and Betty Colleen Eilender's parental rights.

Respondents are the biological parents of. Marvin (date of birth 6-19-94), Charles (date of birth 12-29-95), Hannah (date of birth 6-13-97), Lewis (date of birth 12-17-99), and Lillian (date of birth 11-16-04)

BACKGROUND

A permanent custody hearing began on August 27, 2007, continued on multiple dates through April 25, 2008. This Court issued an opinion on May 7, 2008 finding clear and convincing evidence that at least

one of the statutory grounds to terminate parental rights were proven under MCL 712A. 19(b)(3)(C)(i)(3)(g) and (3)(J) See Courts opinion of 5/7/08 at pg. 86. The family was referred to the psychological clinic for evaluation A Best Interest hearing was scheduled on July 21 and July 22.

BEST INTEREST HEARING

At the Best Interest Hearing testimony was offered by Ms. Jennifer Stevens, Foster Care Supervisor, Ms. Jodi Perez, DhS worker, Ms. Jolly. Ms. Jennifer Zoltowski, court clinical psychologists Dr David Eilender respondent father, Ms Betty Colleen Eilender, respondent mother, Ms. Sivia Eilender, respondent father's mother, (hereinafter grandmother) and Mr Wolber.

In reaching the decision set forth herein, the Court has reviewed all witnesses' testimony, all exhibits admitted, any and all stipulations agreed to by counsel Any and all findings of fact and conclusions of law made by the Court throughout this opinion are based upon the clear and convincing evidence standard The Court finds that the above witnesses testified at the Best Interest Hearing as follows:

MS. JENNIFER STEVENS testified she is employed at St. Frances House as a Foster Care Supervisor. She first came in contact with the Eilender case in February 2006. An amended petition was filed in August 2007. Dr. Eilender has not provided any information on mental health treatment Dr Eilender has not called Ms. Stevens, the case worker or Department of Human Services (hereinafter DHS) concerning the children

Ms Eilender has telephoned her on occasion and expressed concern about the kids. Ms Eilender has expressed to her that she does desire to have her

children returned, it is not appropriate for kids to be returned to her and it is better for kids to stay in foster care.

Ms Stevens testified that Ms Eilender made the statements on or about 12-5-07 and February 2008 She further related that Ms. Eilender does love her children. Ms. Eilender has said to her that it is best for the children to be outside the home and she did not think she could have the children because Dr. Eilender would have access to the children. She did not know if the children would be safe with her because Dr Eilender could get to her She had spoken to Ms Eilender on the day of the court's best interest hearing and Ms Eilender said she agreed with everything Ms. Stevens was saying and she didn't believe she could take care of the children Ms. Stevens testified that Ms. Eilender presently was living in an Extended Stay Hotel in Farmington Hill, Michigan. She opined that an Extended Stay Hotel would not be appropriate for home study.

Ms Eilender's last visitation with the children was November 2007. The visit ended early because of Ms Eilender's behavior. Ms. Eilender appeared to be under the influence of substances at visit with children In December 2007, Ms Eilender's therapy with children ceased

On Cross-examination by Guardian Ad Litem Ms. Stevens opined that she does not feel Ms Eilender can parent the children because of Ms. Eilender's emotional instability.

As to Dr Eilender, Ms Stevens testified Dr. Eilender visited with children a couple times at her agency. On occasion when worker attempted to contact Dr. Eilender by pager, his reply was put it in writing Dr Eilender would eventually respond, but not timely On Dr. Eilender's visitation with children, Ms Stevens related one occasion when children

wanted to change visits to Friday because children had other activities on Friday. She explained this to Dr. Eilender and he said could not be changed Ms. Stevens opined that she did not feel dad could parent effectively. She further testified that Dr. Eilender is engaged in a power struggle with the agency and fails to understand the affect it has on his children

JODI PEREZ testified us follows. she is the DHS worker over the case. She has reviewed the session notes of Dr. Stulberg At a session on 8-29-06, the children were upset because Dr Eilender hit Ms. Eilender. That Marvin reminded Dr. Eilender that he had to yell one time to get Dr Eilender off Ms Eilender Session notes of July 16, 2007. Dr Eilender blamed Ms Eilender for money being screwed up In this same session the children expressed they did not believe what Dr Eilender said about mother screwing up the money

In October 15, 2007 session Dr Eilender was still blaming Ms Eilender for situation that brought the children into care of DHS. Ms. Perez opined that mother failed to protect the children by staying with a man who did not provide for her and the children. That Dr. Eilender horded food and physically and emotionally harmed the children Ms. Eilender choosing to stay with Dr Eilender was an intentional act by Ms. Eilender.

MS JOLLY testified as follows: she lived across the street from the Eilender home. She has lived at her present home for twenty-three (23) years She knows all the children.

On Direct Examination Ms. Jolly opined it would not be in the best interest of the children to terminate Ms. Eilender's rights She indicated that she has no doubt Ms Eilender loves her children or that the children love their mom

On Cross-examination Ms. Jolly testified that Ms Eilender is still working on being able to take care of herself and is still not able to be a full time parent. She opined that Ms. Eilender on her good days would say that it is in the best interest for the children to be in foster care Finally, Ms. Jolly expressed "Concern" about Ms. Eilender's present state indicating that she is the only one (resource) Ms Eilender has now.

The next witness to testify was MS. JENNIFER ZOLTOWSKI Court Clinical Psychologist. Exhibit 2-Bl, the psychological evaluation was admitted into evidence in conjunction with Ms. Zoltowski's testimony. All parties stipulated to Ms. Zoltowski's qualifications as a psychologist and expert.

MS JENNIFER ZOLTOWSKI testified that the Eilender children are aware of the court proceedings and speak in court language, such as knowing of the termination hearing and knowing that the purpose of the termination hearing was for the judge to decide if they returned home or not An awareness that Dr. Eilender had not followed the court's orders, did what he was required to do in order to get the children returned An awareness that Ms. Eilender was arrested and placed in jail for a period of time. Ms. Zoltowski related that the children expressed a desire for seeing this process end and a final decision be made in order that they could have stability.

She opined that it was not beneficial for the children to know that much about court proceedings. Both parents have discussed court proceedings with children. Ms. Zoltowski testified that she conducted a psychological evaluation of the Eilender family. She also reviewed the entire court file and reviewed this court's May 7, 2008 opinion. The childrens names and ages are Marvin 14 years old; Charles 12

years old; Hannah age 11; Lewis age 8; and Lillian age 5 was not evaluated. As a result of conducting the psychological evaluation she completed, the psychological report dated July 3, 2008.

Ms. Zoltowski further testified that at least three of the children related having seen Dr. Eilender punch or hit their mother on occassion All children commented on the condition of the home being unkept and the amount of clutter throughout the home All children acknowledge knowing their mother's emotional, mental health problems, and mother's inability to care for them Ms. Zoltowski testified that Marvin was the only child who expressed a desire to live again with Dr Eilender.

Zoltowski opined based upon review of the entire court file, review of the court's opinion of May 7, 2008 and conducting the psychological evaluations of the Eilenders, that it would be in the best interest of the Eilender children for Dr. and Ms Elidender's parental rights to be terminated for the stability of the children and to permit the children to have security in their lives She related that Dr Eilenders focus remains proving the Court and DHS wrong, rather than focusing on what he needs to do to reunify with his children. When asked about Respondent Father's Exhibit # 1, Hannah's letter expressing a desire to see Dr. Eilender. Ms. Zolowski responded that it is not unusual for abused children, in spite of being abused by a parent, to still love their abusing parent and want to be with the parent She reaffirmed her opinion, that Dr. Eilender's parental rights to all children should be terminated based upon the entire file and her review of all records.

DAVID EILENDER testified at the Best Interest Hearing (hereinafter Respondent Father), Respondent Father testified he loves his children and wants them all returned He has completed eve-

rything in his Parent Agency Agreement to the best of his abilities (PAA) He has benefited from services provided to him Respondent Father acknowledged he has some responsibility for his children's coming into the care of DHS. He acknowledged not doing anything about the condition of the house Being aware of his wife's mental and emotional condition and exposing the children to her, that he should have sought help. That some things he did as a parent were not the best. Respondent father denied any hording behavior. He denied any obsessive compulsive disorder or obsessive compulsive personality disorder behavior or characteristics. He denied any physical abuse of the children or respondent wife He testified that it was not Dr. Stulberg's fault his children are in care He stated that progress toward reunification was being made until Dr Stulberg's involvement He testified that Dr. Stulberg said to him that since he filed a complaint against her, he would not get reunited with his children Respondent father testified he has a home for the children It is the home the children grew up in. He has stable employment. His salary is three hundred thousand ($300,000) per year.

During the course of Respondent father's testimony, Exhibits 2 & 3 were admitted. Exhibits 2 & 3 are photographs showing Respondent father and all the children in a group smiling. The limited purpose of admission of Exhibits 2 & 3 was to establish that at the time the photos were taken a bond existed between Respondent father and the children The date the photos were taken were not established

Respondent father testified in the event the children were returned to his care, he would have nannies assist with the children during the time he was working. On Cross-examination, Respondent fa-

ther acknowledged he has not participated in any individual counseling or treatment since the court's opinion adjudicating that grounds for termination of his parental rights exist. He further admitted that he does not have a nanny identified and in place to care for the children in the event they are returned to his care.

The Court makes the following findings of fact based upon respondent father's best interest testimony, and the entire record·

- Respondent Father loves his children and wants to be reunited, with them.
- Respondent Father continues to blame DHS, Respondent wife, the Court, and others for his children coming into care and remaining in care.
- That even though Respondent Father states he has benefited from services received, the total record suggest minimal benefit if any.
- Respondent Father continues to deny OCD issues and need for treatment even though his own doctor provided the initial diagnosis of OCD later confirmed by McIntosh from the court psychological clinic
- Given Respondent Father has not received treatment for OCD nor acknowledges the need for OCD treatment, the Court finds it likely that Respondent Father will continue to exhibit OCD behavior resulting in likely harm to the children in the event they were returned to Respondent Father.
- Respondent Father denies physical abuse of any of the children He denies assaulting respondent wife Although all children, respondent wife, and care givers say he "crabbed" Charlie and Lewis, and assaulted respondent wife.

- Given that Respondent Father denies any physical abuse of children even though he has completed parenting classes, and family counseling, the Court finds his failure to acknowledge physical abuse of any of the children suggest he derived no benefit from services provided and therefore it is likely physical abuse to the children would reoccur if they were returned to Respondent Father.
- Respondent Father verbally acknowledged a need for continued psychological counseling during the best interest hearing, however, he is not currently in counseling nor has he completed any additional parenting classes.
- Given Respondent Father's failure to seek continued counseling even though acknowledging a need for continued psychological counseling, the court finds the children will likely suffer harm if reunited with Respondent Father when he is not receiving ongoing psychological counseling nor parenting classes.
- Respondent Father's ongoing and unchanged lack of insight into his own behaviors continue to place the children at risk As indicated in *In re Gazella*, 264 Mich App 668 (2005):

> . "Compliance" could be interpreted as merely going through the motions physically; showing up for and sitting through counseling session, for example However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the child would no

> longer be at risk in the parent's custody In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes, but learning nothing from them and, therefore, not changing one's harmful parenting behaviors, is of no benefit to the parent or child.
>
> It could be argued that a parent complied with a case service plan that merely required attending parenting classes but was silent concerning the need for the parent to benefit from them It is our opinion that such an interpretation would violate common sense and the spirit of the juvenile code, which is to protect children and rehabilitate parents whenever possible so that the parents will be able to provide a home for the children that is free of neglect or abuse.

In the instant case, significant and varied services were provided to respondent father with the desire and hope that through his honest and active participation in same, reunification could be facilitated. However, when the facts of the instant case are viewed in their totality, the Court is convinced that despite various, numerous and extensive services which were provided to this family and respondent father, he has failed to benefit from the services to the level necessary to rehabilitate his behaviors and protect the children from again being exposed to such neglectful and/or abusive behaviors.

In short, the Court concludes that respondent father in the instant case merely has gone through the motions in counseling sessions and parenting classes and says he has benefited when in fact he has not.

The Court finds that BETTY COLLEEN EILENDER (hereinafter Respondent Mother) testified at the Best Interest Hearing and testified as follows She loves her children with all her heart. She receives $4, 500 00 per month in alimony. The children names and date of birth are as follows Marvin 6-19-94, Charlie 12-29-95, Hanna 6-13-97, Lewis 12-17-99, Lillian 11-16-04

In the event her parental rights are terminated, she would like to be able to write and/or phone the children from time to time as well as send gifts. Respondent mother indicated that she takes full responsibility for the addictions that she has She knows she can' t care for her children right now She knows she can' t parent right now That someday she will be there for the children and available

Based upon Respondent Mother' s testimony at the Best Interest Hearing and all records in this case, the Court finds and concludes as follows:

- Respondent Mother loves her children
- Respondent Mother cannot presently parent her children. She is aware of her inability to parent her children
- Respondent Mother continues to suffer from mental health issues
- Respondent Mother has insight as to her emotional, mental, and physical challenges and the limitation and barriers to her pa-

renting her children resulting from these challenges.

- Although Respondent Mother has derived some benefit from services provided, her mental, emotional, and physical conditions remain very fragile and likely will remain fragile for the long term.

MS SIVIA EILENDER testified at the Best Interest Hearing, the Court did not find her testimony to be helpful in determining the issues before the Court Her testimony was not relied upon by the Court in this decision

MR. WOLBER testified at the Best Interest Hearing The Court did not find his testimony helpful in determining the issues before the Court. His testimony was not relied upon by the Court in this decision

The Court reviewed the psychological evaluation admitted as Exhibits 2-B1 and therefrom finds and includes Dr Eilender, Ms. Eilender, Marvin, Charlie, Lewis and Hannah were evaluated, Lillian was not evaluated.

The psychological evaluation, of Respondent Father reflects the following Respondent Father completely denies ever physically abusing respondent mother Respondent Fathers personality inventories suggest he is motivated solely by his own self interest He can be unreliable, impatient and resentful. His responses were suggestive of mild paranoia and a sense that people are out to get him despite evidence to the contrary. He can be self-indulgent, exhibitionistic and manipulative. There are major discrepancies between Respondent Father's self-report and the testimony and reports of others. One example of such a discrepancy follows.

Dr. Rafael Gonzales, a psychiatrist, he saw testified at the termination hearing that Respondent Father presented symptomology consistent with obsessive compulsive disorder or obsessive compulsive personality disorder Mr McIntosh from the psychological clinic also noted symptoms consistent with the disorder in his 2005 evaluation.

Respondent Father during his evaluation with Jennifer Zoltowski, denied any behavior consistent with obsessive compulsive disorder or obsessive compulsive personality disorder. He denied any hording behavior even though he previously admitted renting storage facilities for all the items he did not throw away This is also inconsistent with reports that he had an excessive number of cameras and other items locked in rooms in the family home Respondent Father denies ever physically abusing Respondent Mother despite overwhelming evidence to the contrary including testimony at an in home care provider and statements of the children Respondent Father indicated the case went from being a temporary wardship to termination because DHS did not put services into place for the first six months the case was open, and that legal mistakes also contributed to the case becoming a termination.

Respondent Father states that all the children want to go home This is inconsistent with what the children related during their interview. He blames Dr Stulberg for termination of his visitation with the children. Respondent Father exhibits a continued pattern of denial and blaming others for his failure to protect his children and his treatment of Respondent Mother. This pattern continued during his interview

The Court finds the psychological evaluation of Respondent Mother reflects the following. Respondent Mother stated that Respondent Father be-

gan abusing her six months into their relationship Inspite of the abuse, she dated Respondent Father for four years and agreed to marry him. Respondent Mother made the following allegations against Respondent Father he raped her, backed a truck into her, beat her, stalked her, head-banging her, and caused her to have two miscarriages. Respondent Father "crabbed" the children and choked them Crabbing is defined as a squeezing technique wherein one is held still and subjected to very tight squeezing. She alleged that Respondent Father would not allow her or the children to seek medical care Respondent Mother admitted she "has a problem", but then said it was Respondent Fathers fault because she wasn't allowed to throw anything away. She would buy things from rummage sales and Salvation Army. She does not believe she overbought.

Respondent Mother admits she struggles to control the children's behavior. She admitted being afraid of the children Respondent Mother admits a suicide attempt in an effort to get help. She has made multiple suicide attempts dating back to her first marriage. Respondent Mother has a history of mental health treatment Respondent Mother has a history of alcoholism, but is not attending any support group or receiving professional treatment.

Respondent Mother has a history of eating disorders, but is not receiving professional treatment Respondent Mother is not currently receiving any counseling or therapy other than medication management reviews with her psychiatrist Respondent Mother is currently on probation for perjury. She blames this on Dr Stulberg, indicating Dr. Stulberg told her she was afraid Respondent Father would abuse the children if he were allowed to have overnight visitation This is why she says she lied on

Respondent Father which resulted in his being jailed.

Respondent Mother struggled to stay focused on topics at hand during psychological evaluation and frequently went off on tangents unrelated to the question at hand. Respondent Mother's responses during evaluation suggest a resistance to admitting to her personal short coming Respondent Mother's responses indicated she may be attempting to repress symptomology or lacks insight into her own behavior She may verbally state a desire for help, but it is likely she does not follow through once services are in place. The evaluator opined that Respondent Mothers responses to personality inventories were so distorted that little clinical information could be obtained. Respondent Mother telephoned Dr Zoltowski at least eight times after her evaluation

The psychological evaluations of the children reflect the following· [MARVIN]: condition of family home upstairs not to bad Downstairs okay. His mother's alcoholism ruins her ability to parent He describes her as unstable. He does not want to live with her, but does not want to lose contact with her. His father was aware of his mother's mental illness and alcoholic condition. He has seen Dr. Eilender push his mother. His father crabbed Charlie and Lewis His father did little to help them and should have done more. He would like to go and live with his father. He believes his father needs more parenting classes. He states that before going to live with Dr. Eilender, he needs to take responsibility for his actions. In the event his parent's rights are terminated, he would like to be adopted by a relative or the Kowalecs

[CHARLIE]: condition of family home pretty bad He describes heaps of clothes being all over the

house. He is very angry with mother. He notes she has an eating disorder and would purge a lot His mother relies on excuses He does not trust her. Charlie indicates he was the individual his father directed the majority of his physical abuse toward. He believes this was because he would stand up to Dr Eilender He talked about being yelled at, pushed and crabbed on a regular basis He says his father is too controlling to allow anyone to help him. He is okay with termination and would like to be adopted by the Kowalecs.

[HANNAH]; conditions of home. Home in poor condition She attributes the condition of the home to her mother Her mother drank a lot. She believes if mother did not drink, everything would have been fine Parents were always yelling at one another. Hannah confirms Dr Eilender took her bedroom lamp away even though he knew she was afraid of the dark

She loves her mother very much, but recognizes her problems Hannah wants her mother's rights terminated She is less certain of a desire to have Dr Eilender's rights terminated She would like a few visits before she decides. Hannah expressed that her father hurt Charlie and Lewis in the past and she worries what would happen if they bother father too much. She stated she knows she can't live with either parent and they are unable to take care of her.

The Court has particular concerns for Hannah's emotional, psychological wellness based upon a 2005 psychological evaluation by Wayne MacIntosh wherein he described an incident involving Hannah and the death of three birds

[LEWIS] condition of home He stated condition was so bad on one occasion a can of paint spilled and he and the other children smeared it everywhere

in the house. He stated there were no rules and he could do as he pleased. He said there was no food and bugs were all over the place He attributes the majority of the mess to his mother. He also described his father's office as "A huge mess". He indicated there were locked doors in the house and rooms he was not allowed to enter. He is not scared of his father presently, but would be if he had to live with him He does not want to live with his father nor with his mother. He would like to stay in his current foster placement and be adopted.

Upon review of the testimony of Jennifer Zoltowski and psychological evaluation of the Eilender family conducted by her, the Court finds she reached the following conclusions and opinions·

- It is in the best interest of the Eilender children that they be allowed the opportunity to find stability and security in their living environment They cannot do so if this case is continued. (Page 23 of psychological evaluation)
- The chance that further reunification efforts would be successful is minimal and would only cause further anxiety and instability for the children (Id. P 23)
- It is the recommendation of this writer (Zoltowski) that the children have no further contact with either Dr or Ms. Eilender. (Id P 23)

The conclusions reached by Ms. Zoltowski are found to be supported by clear and convincing evidence as outlined throughout this opinion as well as the case files, social file, and exhibits admitted during the best interest hearing The above referenced testimony and psychological evaluation and conclusions of Ms Zoltowski are adopted by the Court as findings of fact herein.

LAW

MCL 712A.19(b)5

MCL 712A.19(b)(5) makes termination mandatory if the petitioner establishes a statutory ground for termination unless the Court finds that termination is clearly not in the child's best interest, See in Re Trejo, 462 Mich 341 (2000). The rational behind these mandatory provisions is the balancing of policies favoring preservation of the family unit and that of protecting a child's right and need for security and permanency. In Re Trejo, id.

In it's opinion of May 7, 2008, this Court found that petitioners by clear and convincing evidence had established that at least one of the statutory ground to terminate parental rights had been proven under MCL 712A 19(b)(3)(C)(i), (3)(g) and (3)(J).

CONCLUSION

The Court hereby finds based upon all the testimony presented at the best interest hearing, the social and case file and the psychological evaluations, that the clear and convincing evidence established as set forth throughout this opinion that it is clearly in the best interest of each individual Eilender child, to wit· Marvin, Charlie, Lewis, Hannah and Lillian, that Respondent Father's parental rights to child shall be and is hereby terminated

The Court further finds based upon all the testimony presented at the Best Interest Hearing, the social and case file and the psychological evaluations, that the clear and convincing evidence' establishes as set forth above, that it is clearly in the best interest of each of the Eilender children that Res-

pondent Mother's parental rights to each individual Eilender child, to wit: Marvin, Charlie, Lewis, Hannah and Lillian, shall be and is hereby terminated.

The Court finds by clear and convincing evidence from the total record as set forth above that each of the individual children's right to and need for security and permanency is best served by allowing each an opportunity to live in a stable, safe, clean, nurturing environment which the entire record in this case establishes cannot be provided by either of their parents. These children have been in foster care for three years They have not spoken to either parent in over six months.

Both parents have been offered numerous services over the past three years. Inspite of these services, both parents continue to behave inappropriately when allowed contact with their children This Court concludes the clear and convincing evidence above establishes it is unlikely that additional services will be beneficial. The Court further concludes from the entire record that each of the children would likely suffer harm of the nature previously visited upon each while in respondent parents care if reunited with respondent parents.

Mother has requested in the event her parental rights are terminated that she be allowed to have contact with the children occasionally by way of cards, or letters The Court declines to permit such contact in light of Zoltowski's testimony that historically mother does not have a history of stability If contact were permitted and it suddenly stopped, it could devastate the children. While respondent mother acknowledges her inability to care for her children, Respondent Father does not and continues to place blame upon others.

In this regard, Respondent father might benefit from familiarizing himself with the insightful words of Cassius·

> "the fault, dear Brutus, is not in our stars, but in ourselves..." "Men at times are masters of their fate "
>
> William Shakespeare
> Julius Caesar I II

It is so ordered.

8/29/08 — /s/ Hon. Leo Bowman
Date — Circuit Court Judge – Family Division

APPENDIX C

EXHIBIT 3

Approved, SCAO

STATE OF MICHIGAN 6th JUDICIAL CIRCUIT - FAMILY DIVISION OAKLAND COUNTY	ORDER TERMINATING PARENTAL RIGHTS (CHILD PROTECTIVE PROCEEDINGS) ORDER 1 OF 1	CASE NO. PETITION NO.

Court address 1200 N. Telegraph Road, Pontiac, MI 48341 Court telephone no. (248) 858-0112

1 In the matter of Marvin Charles Hardy Nash Hannah Elleen Rose, Lewis Abraham Joseph and Lillian Sarah Ellender
name(s), child(ren), DOB 6/19/01,12/28/05,8/13/07 12/17/00;11/18/04

2. Date of hearing. July 21 & 22 & August 29, 2006 Judge/Referee: LEO BOWMAN P34807
Bar no.

3. Removal date. 2-26-04 (specify for each child if different)
4 An adjudication was made and the child(ren) was/were found to come within the jurisdiction of the court.
5 A petition to terminate parental rights has been filed and notice of hearing on the petition was given as required by law
6 Specific findings of fact and law regarding this proceeding have been made on the record or by separate written opinion of the court.

THE COURT FINDS

7 ☒ a. Reasonable efforts were made to preserve and unify the family to make it possible for the child(ren) to safely return to the child(ren)'s home. Those efforts were unsuccessful.
☐ b. Reasonable efforts were not made to preserve and unify the family because it was previously determined in a prior court order to be detrimental to the child(ren)'s health and safety
☐ c. Reasonable efforts were not required to preserve and reunify the family as determined in a prior court order

8 There is clear and convincing evidence that a statutory basis exists for terminating the parental rights of

Both Parents, David and Betty Ellender , parent(s) of the child(ren)
Name(s) of parent(s)

☐ 9 The child(ren) are member(s) of or eligible for membership in an American Indian tribe or band. There is evidence beyond a reasonable doubt, including qualified expert witness testimony, that continued custody of the child(ren) by the parent(s) or Indian custodian is likely to result in serious emotional or physical damage to the child(ren).

IT IS ORDERED:

10 The parental rights of Both Parents, David and Beth Ellender
Name(s) of parent(s)

are terminated and additional efforts for reunification of the child(ren) with the parent(s) shall not be made.

11 ☐ a. The child(ren) is/are continued in the temporary custody of this court and remain in placement with the Department of Human Services for care and supervision.
☒ b. The child(ren) is/are committed to the Department of Human Services for permanency planning, supervision, care and placement under MCL 400.203.

12 The Director of the Michigan Department of Human Services is appointed special guardian to receive any benefits now due or to become due the child(ren) from the government of the United States.

☒ 13 Other (Include reimbursement provisions as required by MCL 712A.18(2), attach separate sheet if necessary)
Orders for reimbursement may follow.
The Lawyer Guardian Ad Litem shall comply with the Order of Appointment and MCL 712A.17d. Best Interest Hearing held and written opinion to be issued on August 29, 2006. Pamela Dreyfus and H. Elliott Portnoy & Paul Baker: Court appointed attorneys, are hereby released.

14 The court reserves the right to enforce payments of reimbursement that have accrued up to and including the date of this order.

15 A review hearing will be held November 18, 2006 at 1:30 p.m.
Date

Recommended by: _____ _____
Referee signature Judge/Referee signature

9/15/06
Date Judge/Referee, P34807

NOTE: Within 28 days after the permanent custody hearing, any party may file a written request for rehearing or new trial. If a supplemental petition for termination of parental rights is filed, the permanent custody hearing must be held within 182 days after the dispositional hearing. This is appropriate period to schedule a hearing. If the permanent custody hearing cannot be scheduled within that time, the court must dismiss the petition, unless it finds that the delay was caused by the respondent parent or by other circumstances that would justify an extension. MCR 3.977(A)(1).

USE NOTE: Do not use this form when terminating parental rights after release pursuant to the adoption code.

Do not write below this line -- For court use only

25 USC 1912, MCL 400.203 et seq., MCL 712A.18, MCL 712A.19a, MCL 712A.19b, MCL 712A.20, MCR 3.977, MCR 3.993

JC 83 (5/01) ORDER TERMINATING PARENTAL RIGHTS (CHILD PROTECTIVE PROCEEDINGS)

Approved SCAO — JIS CODE: SRE, PRM

STATE OF MICHIGAN 6th JUDICIAL CIRCUIT FAMILY DIVISION OAKLAND COUNTY	ORDER FOLLOWING DISPOSITIONAL REVIEW/ PERMANENCY PLANNING HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 1 ORDER ____ OF ____	CASE NO. PETITION NO.

Court address: 1200 N Telegraph Road Pontiac MI 48341 — Court telephone no.: (248) 858-0112

1. In the matter of: Marvin Charles Henry Hoar, Hannah Eileen Rose, Laura Abraham Joseph and Lillian Sarah Ellender
name(s), sex(es), DOB: 6/19/04; 12/20/2005; 3/13/07; 12/17/2007; 11/18/04

2. Date of hearing: July 10, 2008 — Judge/Referee: _____ (Enter as)

☒ 3. Removal date: 2-28-09 (specify for each child if different)

Last permanency planning hearing date: _____ (specify for each child if different)

4. As of this last order, the child(ren) named above was/were in the temporary custody of the court, and
☐ remained in the home. ☒ was/were placed with the Department of Human Services for care and supervision.

5. Notice of hearing for the ☒ review ☐ permanency planning ☐ combined review and permanency planning hearing was served as required by law. ☐ Notice of proceedings is to be given as required by law.

THE COURT FINDS

6. The lawyer-guardian ad litem ☒ has ☐ has not complied with the requirements of MCL 712A.17d.

7. ☐ a. There is probable cause to believe the legal/putative father(s) is/are
(name each child's alleged father and whether legal or putative)

☐ b. The putative father of _____ is unknown and cannot be identified.
☐ c. The natural father was notified as required by law and failed to establish paternity within the time set by the court. The natural father waives all rights to further notice, including the right to notice of termination of parental rights and the right to an attorney.

8. The court has considered the case service plan and other evidence presented. The findings below are specific to this case and are based upon this hearing, and ☒ the following report(s): Oral Report given
(identify report(s) and date(s) of report(s))

Specific conditions reviewed on the record as required by MCL 712A.19(6) were:

a. compliance with the case service plan with respect to services provided or offered to the child and his or her parent(s), guardian, or legal custodian and whether the parent(s), guardian, or legal custodian complied with and benefited from those services.

b. compliance with the case service plan with respect to parenting time with the child and whether parenting time did not occur or was infrequent, and the reasons why.

c. the extent to which parent(s), guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent(s), guardian, or legal custodian and the agency.

d. likely harm to the child if the child continued to be separated from his or her parent(s), guardian, or legal custodian.

e. likely harm to the child if the child was returned to his or her parent(s), guardian, or legal custodian.

(SEE SECOND PAGE)

USE NOTE: Use this form for review or permanency planning hearings. After termination use form JC 76 instead.

Do not write below this line -- For court use only

MCL 712A.17c(1)(c), MCL 712A.18f, MCL 712A.19, MCL 722A.19a, MCR 3.923(E), MCR 3.976(A)(3), MCR 3.979, MCL 3.976(D)(1)

Approved SCAO — JS CODE SRC PRH DNS 2

STATE OF MICHIGAN 6th JUDICIAL CIRCUIT FAMILY DIVISION OAKLAND COUNTY	ORDER FOLLOWING DISPOSITIONAL REVIEW/ PERMANENCY PLANNING HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 2 ORDER 1 OF 1	CASE NO 85-767844 NA PETITION NO

Court address 1200 N Telegraph Road Pontiac MI 48341 — Court telephone no (248) 858 0112

In the matter of Marvin Charles Henry Nash, Hannah Eileen Rose Lewis Abraham Joseph and Lilian Sarah Chandler

☒ 9 Returning the child(ren) to the parent(s) guardian, or legal custodian ☐ would ☒ would not cause a substantial risk of harm to the child(ren)'s life physical health or mental well being

☐ 10 The child(ren) should not be returned to the parent(s) guardian, or legal custodian. The agency ☐ should ☐ should not initiate proceedings to terminate the parental rights to the child(ren)

NOTE: If the child(ren) were not removed prior to the dispositional review or permanency planning hearing and new allegations are made which require removal, a supplemental petition must be prepared and filed and an emergency removal hearing held, whereupon contrary to the welfare and reasonable efforts findings must be made. Use form JC 75. See MCR 3.974(B) and (C).

☒ 11 ☒ a Reasonable efforts ☒ were ☐ were not made to preserve and reunify the family to make it possible for the child(ren) to safely return to the child(ren)'s home. (specify reasonable efforts taken and if applicable the reasons for return)

☒ 1) Reasonable efforts for reunification should be continued

☐ 2) Those reasonable efforts were successful and the child(ren) should be released to

_____
Name(s) of parent(s) guardian, or legal custodian

The reasonable efforts include (specify)
based on the statements placed on the record

☐ b Reasonable efforts to preserve and reunify the family to make it possible for the child(ren) to safely return to the child(ren)'s home are not required based on a prior order

☒ 12. Progress toward alleviating or mitigating the conditions that caused the child(ren) to be placed or to remain in temporary foster care ☒ was ☐ was not made in accordance with MCL 712A.19(7)

13 The child(ren)'s continued placement ☒ is necessary and appropriate and is meeting the child(ren)'s needs
☐ is no longer necessary or appropriate

☒ 14 *Reasonable efforts ☒ have ☐ have not been made to finalize the court approved permanency plan of
☒ a return to the parent for child(ren) named Marvin, Charles Henry Nash, Hannah Eileen Rose Lewis Abraham Joseph and Lilian Sarah Chandler
☐ b legal guardianship for the child(ren) named _____
☐ c adoption for the child(ren) named _____
☐ d placement with a fit and willing relative for the child(ren) named _____
☐ e placement in another planned permanent living arrangement, identified as _____
due to the compelling reasons that

(provide the name of each child and briefly list compelling reasons for another planned permanent living arrangement for that child, as appropriate by entering the language that corresponds to the number(s) from the list on page 3)

(SEE THIRD PAGE)

STATE OF MICHIGAN 6th JUDICIAL CIRCUIT FAMILY DIVISION OAKLAND COUNTY	ORDER FOLLOWING DISPOSITIONAL R. & PERMANENCY PLANNING HEARING (CHILD PROTECTIVE PROCEEDINGS) PAGE 3 ORDER 1 OF 1	CASE NO 05 7076/1 NA PETITION NO

Court address 1200 N Telegraph Road Pontiac, MI 48341 Court telephone no (248) 858-0112

In the matter of Marvin, Charles Henry North Hannah Eileen Rose Lewis Abraham Joseph and Lillian Sarah Crandler

The reasonable efforts made to finalize the court approved permanency plan identified above include
(Specify the permanency plan for each child and the reasonable efforts made toward reaching that plan)

based on the statements placed on the record

☐ Since adoption is the court approved permanency plan, the Department of Human Services shall be ordered to initiate proceedings to terminate parental rights

☐ 15 Parenting time with _____ even if supervised may be harmful to the child(ren)

NOTE: *MCL 712A.19a provides that these reasonable efforts findings must be made within 12 months from when the child was removed from his/her home and every 12 months thereafter*

IT IS ORDERED:

☐ 16 Notice is to be given to the legal/putative father(s) as required by law ☐ The father was not present and must appear at the next hearing ☐ The putative father was present at this hearing and shall establish paternity within 14 days

☒ 17 The child(ren) is/are continued in the temporary custody of this court, and
☒ is/are placed with the Department of Human Services for care and supervision, and
a. the parent, guardian, or legal custodian shall execute all documents necessary to release confidential information regarding the child(ren), including medical, mental, and educational reports, and shall also, within 7 days, provide the Department of Human Services with the name(s) and address(es) of the medical provider(s) for the child(ren). Any medical provider of the child(ren) shall release the medical records of the child(ren) to the Department of Human Services
b. if a home study has not yet been completed, then one shall be performed by the Department of Human Services and a copy of the home study submitted to the court not more than 30 days after the placement,
c. upon request, the Department of Human Services shall release to the foster parent the information concerning the child(ren) in accordance with MCL 71A.13a(13)
☐ remain home with or is/are released to _____ under the supervision of the Department of Human Services. ☐ The following terms and conditions apply to the parent/guardian/legal custodian

☐ 18 The Department of Human Services shall initiate proceedings to terminate parental rights to the child(ren) no later than 42 days from the date of this hearing

☒ 19 The parent(s), guardian, or legal custodian shall comply with, and benefit from, the case service plan. ☐ In addition,

☐ 20 Parenting time of _____ is
☐ supervised by the Department of Human Services, and/or its designee,
☐ unsupervised at the discretion of the Department of Human Services
☐ suspended while psychological evaluation or counseling is conducted, or until further order of the court.

(SEE FOURTH PAGE)

Approved, SCAO

JIS CODE: SRE.PRN

STATE OF MICHIGAN 6th JUDICIAL CIRCUIT FAMILY DIVISION OAKLAND COUNTY	ORDER FOLLOWING DISPOSITIONAL RE W/ PERMANENCY PLANNING HEARING (CHILD PROTECTIVE PROCEEDINGS), PAGE 4 ORDER 1 OF 1	CASE NO 05-707874-NA PETITION NO

Court address 1200 N Telegraph Road Pontiac MI 48341 Court telephone no (248) 858 0112

In the matter of Marvin, Charles Henry Noah Hannah Eileen Rose Lewis Abraham Joseph and Lillian Sarah Brandon

☐ 21 Parenting time of _____ is
- ☐ supervised by the Department of Human Services and/or its designee.
- ☐ unsupervised at the discretion of the Department of Human Services.
- ☐ suspended while psychological evaluation or counseling is conducted or until further order of the court

☐ 22 Parenting time of _____ is
- ☐ supervised by the Department of Human Services and/or its designee
- ☐ unsupervised at the discretion of the Department of Human Services
- ☐ suspended while psychological evaluation or counseling is conducted or until further order of the court.

☐ 23 Jurisdiction of this court is terminated. The court reserves the right to enforce payments of reimbursement that have accrued up to and including the date of this order. The child(ren) is/are released to _____

24 Previous reimbursement orders shall continue.

☒ 25 Other (attach separate sheet if needed)

☐ The Court approves Native American/related care giver placement with _____

The Lawyer Guardian Ad Litem shall comply with the Order of Appointment and MCL 712A.17d. Placement is continued for all children, the Court orders all cell phone records for Marvin be provided to the Court at the Best Interest Hearing the Court orders the Foster Mother to be present at the Best Interest Hearing

26 Prior orders remain in effect except as modified in this order

☒ 27 Review hearings shall be held as follows

(NOTE: Two review hearings shall not be delayed beyond the number of days required regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19b provides that the permanency planning hearing shall not be delayed beyond 12 months from the date of removal of the child and every 12 months thereafter.)

☒ Best interest hearing 7 21 08 at 8 30 a m ☐ permanency planning hearing _____

The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan including copies of evaluation and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.

28 ☐ Notice of the next hearing has been provided as required by law ☐ Notice of the next hearing shall be provided.

Recommended by:

(Referee/Magistrate)

Date 9/15/08

Judge LEO BOWMAN P34887

(SEE FIFTH PAGE)

The following are examples of compelling reasons for a permanency plan other than return to parent, legal guardianship, placement with a fit and willing relative or adoption.

APPENDIX D

UNPUBLISHED

Court of Appeals of Michigan.

In the Matter of Marvin EILENDER, Charles Henry Noah Eilender, Hannah Eileen Rose Eilender, Lewis Abraham Joseph Eilender, and Sarah Lillian Eilender, Minors.
Department of Human Services, Petitioner-Appellee,

v.

Dr David Eilender, Respondent-Appellant,
And Betty Colleen Eilender, Respondent.
Department of Human Services, Petitioner-Appellee,

v.

Betty Colleen Eilender, Respondent-Appellant,
and Dr David Eilender, Respondent.

Docket Nos. 287939, 288110.

June 30, 2009.

Oakland Circuit Court, Family Division;
LC No 05-707874-NA

Before. FITZGERALD, P.J., and TALBOT and SHAPIRO, JJ

PER CURIAM.

*1 Respondents appeal as of right from the September 15, 2008, trial court order terminating their pa-

rental rights to the minor children (Marvin, DOB 6-19-94; Charlie, DOB 12-29-95, Hannah, DOB 6-13-97, Lewis, DOB: 12-17-99; and Lillian, DOB 11-16-2002) under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm

Docket No 287939

Respondent father does not argue that the statutory grounds for termination were not established by clear and convincing evidence, nor does he argue that it was not clearly in the children's best interest to terminate parental rights Father argues that the trial court erred by terminating his parental rights without first providing him with services to treat obsessive-compulsive personality disorder (OCPD) He contends that this disorder affected his parenting ability. Father concedes, however, that he took the position during the proceedings below that he does not suffer from OCPD In fact, father presented the testimony of Dr Miller that father does not have a mental illness and does not suffer from a personality disorder Father's denial is consistent with his broad denial of any responsibility for any of the problems that this family suffered and for any physical or domestic abuse of his wife or his children The record is replete with testimony that an individual who refuses to accept responsibility for his actions will never be able to change his actions.

Further, the psychological evaluation with regard to father recommended that father "find a specialist, either psychiatric or psychological, who addresses Obsessive/Compulsive Personality Disorder and resulting behavior patterns that make it difficult for an individual to function on a daily basis and that are obviously interfering with the family's ability to

function as a group " Father treated with Dr. Gonzales beginning in June 2005, upon a referral from father's attorney indicating that father might have OCPD, but father discontinued treatment after seven sessions Father indicated to Dr. Gonzalez that he was going to treat with another psychiatrist, but failed to do so Father never provided any information regarding Dr. Gonzalez' diagnosis or prognosis, nor did he provide information regarding his treatment Although father claims that he was not aware of the recommendation that he treat with a specialist in OCPD, the record suggests otherwise. A discussion was held on the record in October 2005 regarding the fact that DHS does not pay for psychiatric treatment and that father's private insurance might pay for such treatment. Father made no attempt after ending his treatment with Dr Gonzalez to secure treatment for the psychiatric condition that he denied, despite the recommendation in the psychological evaluation.

Further, contrary to father's suggestions, DHS did provide referrals for father for individual therapy Father first had individual therapy with Marianne Winter-Long, a social worker with Oakland Family Services, and later with Ian Lloyd, a mental health therapist at Alpha Family Counseling. DHS authorized individual therapy with Lloyd from 1/19/06 to 4/21/08. That referral did not contain any mention of OCPD. A second authorization for the period of 4/20/06 to 7/20/06 listed OCPD as a reason for the extension of the authorization Lloyd did not find father to possess OCPD tendencies At the end of father's second treatment period with Lloyd, Lloyd indicated in a report generated on August 1, 2006, that father had reached maximum benefit and recommended termination of therapy. The *following* day, a

request for an extension of services was made Lloyd testified that he indicated that father had reached maximum benefit because no additional authorizations for treatment would be granted. Lloyd then stated that he meant that father "reached maximum benefit from the therapy that was authorized," but acknowledged that that is not what he stated in his report Father's statement in his brief that "DHS pressured him [Lloyd] into documenting that no further services were needed" is incorrect and misleading.[1] Similarly, father's statement that "most [of father's problems] related or arose from OCPD" is misleading. Indeed, father denied having OCPD, and at least 2 witnesses, including father's own expert, testified that father did not have OCPD

*2 The record reveals that DHS provided many services to father throughout this case and that father failed to benefit from any of those services because he was in denial and refused to accept responsibility for his behavior and for the problems existing in the family The failure of petitioner to ensure father's compliance with treatment to address his OCPD is not enough to render insufficient the evidence for the termination of parental rights.

Father also argues that his interests conflicted with those of mother and, therefore, the trial court erred by denying his request for separate trials. However, the court specifically indicated that it was capable of adjudicating the rights of each parent separately, and properly could terminate the parental rights of one parent without terminating the rights of the

---

[1] Documentation in the record reveals that no further referrals would be authorized for father for individual therapy because he was participating in family therapy

other, if appropriate *In re Marin,* 198 Mich.App 560, 568, 499 NW2d 400 (1993). A separate hearing was not required to avoid prejudice to father's case. See *Detlofr v. Taubman Co, Inc,* 112 Mich App 308, 310-311; 315 NW2d 582 (1982). Indeed, father concedes that there is no authority for the proposition that a separate hearing is required under the circumstances presented in this case.

Next, father argues that the trial court refused to let father's counsel cross-examine the family therapist, Dr. Stulberg, "regarding her anger and resentment toward him" after he filed a HIPPA complaint against her,[2FN2] and then sanctioned him for attempting to obtain a basis for the court's ruling, thereby violating his right to confront his accusers. However, respondent's right to confrontation was not violated because he had no right to confrontation in a child protection proceeding. *In re Brock,* 442 Mich 101, 108, 499 NW2d 752 (1993)

Father also argues that his right to due process was violated because the trial court refused to allow him the opportunity to cross-examine Dr. Stulberg on the issue of bias. The parental right to custody of one's child constitutes a liberty interest entitled to constitutional due process protection *In re Render,* 145 Mich App 344, 348, 377 NW2d 421 (1985). On review de novo of the proceedings below, there is no basis to conclude that father was denied such protection when the trial court cut-off further cross-examination of Dr Stulberg regarding alleged bias Father presents a distortion of what transpired. Ear-

---

[2] The HIPPA complaint resulted from the initial family therapy session that was also attended by the court-appointed special advocate

lier in the hearing, the court had sustained an objection and father's counsel continued to argue with the court over its ruling. The court ultimately informed father's counsel that, "That's one sanction. Move on." When father's counsel continued to argue with the court with regard to the colloquy at issue above, the court informed him of "Sanction two." Thus, the record does not support father's argument that he did not know what the court was referring to [3] Nonetheless, father was not denied his due process rights by the court's limitation of cross-examination of Dr. Stulberg with regard to the HIPPA complaint. Father has not shown how he could further attack Dr. Stulberg's credibility with information that the trial court already knew-i.e., that father had filed a HIPPA complaint against Dr Stulberg In addition, father had listed Dr. Stulberg as a witness and had the opportunity to call Dr. Stulberg, but declined Father has not demonstrated that he was denied due process of law

*3 Lastly, father asserts that he was not able to obtain a copy of the plea proceeding to allow him to raise a challenge to the voluntariness of his plea to the original petition on July 29, 2005.[4] However, the transcript of the plea proceeding was filed on November 17, 2008, two months before father filed his

---

[3] The record does not reveal that any sanctions were imposed against father's counsel

[4] Father concedes that, "This is not a proper appellate issue at all It is, rather, one of necessity." Father's counsel also concedes that the appellant has "the duty to obtain the record and, quite frankly, this Court may discard this question entirely with a single citation thereto."

appellate brief. Consequently, father's argument is misplaced. [5FN5]

---

[5] Nonetheless, father's assertion regarding the voluntariness of his plea is without merit The court asked both mother and father if they understood that by pleading no contest to the contents of the petition they were giving up their right to a trial, to which both responded affirmatively The court informed mother and father that

> When you give up your right to a trial by the preponderance of the evidence, which is what the prosecutor must prove, you are giving up all those rights that go along with the right to a trial, including the right to have the prosecutor prove your responsibility and that the children fall within the neglect statute by the preponderance of the evidence
>
> You're giving up your right to have your attorneys represent you during the trial process, to have witnesses appearing against you and to question those witnesses or have your attorney question those witnesses, to have the Court order witnesses to appear on your behalf, also to testify on your own behalf, if you wish to testify You are waiving all of these rights by pleading no contest to the contents of the petition Do you understand that Ms Eilender and Mr Eilender?
>
> MS EILENDER Yes
>
> MR EILENDER Yes
>
> THE COURT By pleading no contest, you're indicating that you are not contesting the allegations present in the petition You're not pleading responsible to any specific allegations, but do you understand for purposes of this case, the Court is going to treat your no contest plea

Docket No 288110

Respondent mother's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (3)(g), and (3)(j), which state as follows.

Pursuant to MCL 712.A.19b(3), the court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following·

> as if you had pleaded responsibility Do you understand that, Ms Eilender and Mr. Eilender?
>
> MS EILENDER Yes MR EILENDER· Yes
>
> THE COURT And further, please understand the following As a result of your plea of no contest today, the Court will take jurisdiction over these children and the Court will order you after disposition is made in this case to a number of cases aimed at the reunification of your family Should you fail to follow the Court's orders, a petition could be filed to terminate your rights If that occurs, your no contest plea to the contents of this petition could be used against you at that time

Both mother and father indicated that they understood what the court stated The court then continued its questioning to determine the voluntariness of the plea The factual basis of the plea was a two-page copy of the complaint dated May 20, 2005 The court accepted both mother's and father's pleas of no contest, and informed mother and father that

> when the court takes jurisdiction in a temporary custody petition, it is the intent of this Court to work towards reunification of the family And it will take jurisdiction over the family based upon the pleas of no contest by both parents

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the children's parents that the child will be harmed if he or she is returned to the home of the parent

The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. *In re Trejo,* 462 Mich 341, 350; 612 NW2d 407 (2000) This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller,* 433 Mich. 331, 337, 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared be-

fore it *Id ;* MCR 2 613(C). An order terminating parental rights need only be supported by a single statutory ground *In re Trejo, supra;* MCL 712A. 19b(3)

MCL 712A 19b(3)(c)(i)

Mother concedes that she was not [at the time of the termination trial] and is not yet prepared to be a model parent. She asserts that she "deserved more time to address her many concerns" and that the trial court should not have changed the permanency plan from reunification to termination simply because "the magic 182" days had elapsed in this case.

Mother's argument ignores the fact that the children first came under the jurisdiction of the court in May 2005, and that the initial disposition order was entered on October 18, 2005 Clearly, more than 182 days had elapsed since the issuance of the initial disposition order Mother's argument also acknowledges, but fails to give due weight to, the fact that a multitude of services were provided to this family throughout the duration of this case Mother's argument also acknowledges that mother showed some progress with regard to the parent-agency agreement, but that she did not fully comply. Even assuming that mother had fully complied, a party's compliance with the parent-agency agreement is merely *evidence* of the party's ability to provide proper care and custody of the children *In re Trejo supra* at 356-357. Compliance is not unquestionably decisive of the issue Moreover, benefiting from the services is "an inherent and necessary part of compliance with the case service plan." *Id.* The record demonstrates, and mother concedes, that she had not yet benefited from the services she received.

*4 Contrary to mother's suggestion, the trial court was fully aware of the unusual circumstances of this case The court scheduled review hearings nearly every month in an effort to keep the family on track and deal with the many issues presented in this case The court also consistently noted the goal of reunification for this family (with mother and father planning separately in light of their divorce). It was not until it became very apparent that the conditions that led to the adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the ages of the children that the trial court authorized the filing of a supplemental petition to terminate parental rights. Although it is clear that mother loves her children, she is thinking about only herself in suggesting that she be provided more services and more time to rectify the conditions that led to the adjudication. These children had been in and out of foster care for three years, and had been solely in foster care for nearly 2 years at the time of the trial.

MCL 712A.19b(3)(g)

Mother concedes that "she received a multiplicity of services from professionals and friends and neighbors," but argues that she "required exceptional services for a prolonged period of time" and that "more and repeated services should have been provided." Mother essentially argues that DHS rushed to terminate her rights In making this argument, mother likens her situation to that of the respondents in *In re Newman,* 189 Mich App 61; 472 NW2d 38 (1991). Mother's argument fails since *Newman* is factually distinguishable from this case In *Newman,* the service provider assigned to instruct the respondents on

maintaining their home stopped providing the instruction. *Id.* at 65-68 Evidence was presented that progress was being made while the provider's services were being offered. Thus, this Court concluded that the trial court erred in finding the "the conditions in the home to be a basis for terminating respondents' parental rights because respondents were not given a full and fair opportunity to maintain the home. They need help. It was not shown that after being given consistent assistance they still did not rectify the conditions " *Id* at 67-68. In the present case, however, mother was given a full and fair opportunity to provide proper care and custody within a reasonable time considering the children's ages. She had "expected relapses" throughout the course of this case, and there is nothing in the record to support a finding that such relapses would not continue to occur. Further, the policy preference for timely decisions regarding a child's permanency plan is driven by a concern for the child's needs See *In re Hatcher,* 443 Mich. 426, 431 n 5, 505 NW2d 834 (1993). By the time the court terminated mother's rights, the protective proceedings had lasted almost 3 years, during which time mother had been provided ample opportunity to improve her parenting capabilities

MCL 712A 19b(3)(j)

*5 Mother's sole argument with regard to this statutory ground for termination is:

There was no evidence presented that indicated that these children were directly harmed by their Mother when they were in her care. It is only when father was in the home did the neighbor or DHS note that the children were harmed. With father out of the home, the likelihood of harm to the children was nil

Unfortunately, the children did not voice a desire to the Court Clinic evaluator to live with Mother due to negative memories of their life with both parents. Even Ms Eilender said she was not ready yet to parent. Time could have healed these wounds. The professionals could have and should have presented an alternative to termination because Ms. Eilender was highly motivated to be healthy and to be a good parent now that she had monetary means to provide for her family.

This argument need not be addressed because (1) mother has failed to properly present it, and (2) other statutory grounds for termination are supported by clear and convincing evidence.

Nonetheless, the record supports a finding that there was a reasonable likelihood that the children would be harmed if returned to mother's home. With regard to this factor, the trial court found:

This is juxtaposed against mother's capacity to effectuate change and her real desire to do so, but an underlying inability to make such change lasting in duration due to her inability to obtain and effectuate a lasting and stable mental health status. Parenting children brings with it normal trials and tribulations, which in and of themselves create various levels of stress. Mother's inability to remain stable in the face of stress, due to her fragile and extremely sensitive emotional state, make the likelihood of long lasting functionality questionable at best.

Many significant services were provided in this case, with regular (shorter time period) reporting to the Court due to the fluidity of mother's emotional men-

tal health status. Mother was often unable to cope with generally accepted behavioral constraints associated with appearing in a courtroom setting Her irrational and illogical thought processes, and elevated level of neediness often placed others in a caretaking position, as opposed to demonstrating a prolonged ability for her to provide the necessary guidance and care required to parent these five children.

Many opportunities were provided for mother to seek other family members to resume a supportive role in her parenting of the children without success. In additional [sic] an extremely high level of services was required while the children were either in her care or even during limited visitation periods, just to permit her to function at the most basic of levels.

Without emotional and mental health stability, mother has remained vulnerable to her deficits and unable and incapable of supporting the children financially or emotionally, and it is apparent to the Court that the children stand in considerable risk of harm if returned to her care, despite her best intentions and love for them

*6 The record clearly supports the trial court's finding that the children were at risk of harm if returned to mother due to her emotional and mental health stability Indeed, mother recognized that she was not able to properly care for the children at the time of the termination hearing. She had been afforded a multitude of services, including psychological care, as well as psychiatric care, and still she continued to engage in self-destructive behavior and was not able to handle the stress of parenting. Given mother's failure to fully comply with her treatment plan and her history of long-term serious mental health prob-

lems, there remains a reasonable likelihood that the children would be harmed if returned to her care MCL 712A. 19b(3)(j). Contrary to mother's position, it is not necessary that there be evidence of physical harm or neglect to support termination under § 19b(3)(j) See *In re Trejo, supra* at 360-361 n 16

The family court's determination regarding the children's best interests is also reviewed under the clearly erroneous standard *In re Fried,* 266 Mich App 535, 541; 702 NW2d 192 (2005). Once a ground for termination is established, the family court must order termination of parental rights unless the court concludes that termination is clearly not in the children's best interests *Id*

Mother argues that it was not in the best interest of the children to terminate her parental rights because she was making an effort to comply with the parent-agency agreement and was making some progress. Her sole argument with regard to this issue is that she loves and misses the children and would never intentionally hurt them, and that she took full responsibility for her addictions and the trouble that her children have encountered She argues that "termination was premature," but acknowledges that her position at trial was that she "was willing to accept whatever decision the court rendered " She notes that "it cannot be ignored that Ms. Eilender has stated that she is not ready to be a good parent right now ... Time is needed and requested."

After summarizing all of the testimony presented at the best interests hearing and noting the total record, the trial court found with regard to mother

The Court finds by clear and convincing evidence from the total record as set forth above that each of the individual children's right to and need for security and permanency is best served by allowing each an opportunity to live in a stable, safe, clean, nurturing environment which the entire record in this case establishes cannot be provided by either of the parents These children have been in foster care for three years They have not spoken to either parent in over six months

Both parents have been offered numerous services over the past three years. Inspite [*sic*] of these services, both parents continue to behave inappropriately when allowed contact with their children. This Court concludes the clear and convincing evidence above establishes it is unlikely that additional services will be beneficial. The Court further finds from the entire record that each of the children would likely suffer harm of the nature previously visited upon each while in respondent parents' care if reunited with respondent parents.

*7 While the record reflects that respondent expressed love for her children and a desire to care for them in the future, there was no clear error in the trial court's refusal to further delay the children's permanency and stability. The children had been outside of mother's care for a substantial amount of time. Mother was given ample services and time to demonstrate that she could properly parent her children. Testimony by service providers indicated that the children needed permanency and a caregiver who could meet their needs and provide a safe, structured, and stable environment, which mother clearly could not do as evidenced by testimony re-

garding her serious and ongoing parenting deficiencies

The order terminating parental rights is affirmed in both docket number 287939 and docket number 288110

Mich App.,2009.
In re Eilender
Not Reported in N.W 2d, 2009 WL 1890776 (Mich App.)

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APPENDIX E

Supreme Court of Michigan.

In re Marvin EILENDER, Charles Henry Noah Eilender, Hannah Eileen Rose Eilender, Lewis Abraham Joseph Eilender, and Sarah Lillian Eilender, Minors.
Department of Human Services, Petitioner-Appellee,

v.

Dr. David EILENDER, Respondent-Appellant,
And Betty Colleen Eilender, Respondent.

Docket No. 139372.
COA No. 287939.

Sept. 2, 2009.

Prior report: 2009 WL 1890776

Order

On order of the Court, the application for leave to appeal the June 30, 2009 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court

Mich.,2009.
In re Eilender
771 N W.2d 725

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APPENDIX F

MCLS § 712A.2(b) (2009)

Authority and jurisdiction of court.

Sec. 2. The court has the following authority and jurisdiction:

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

(A)"Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B)"Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MrCL 700.5205, regarding the juvenile

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700 5207 and 700.5209, regarding the juvenile

(5) If the juvenile has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the juvenile's parent meets both of the following criteria:

(A)The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.

(B)The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more before the filing of the petition

If a petition is filed in the court alleging that a juvenile is within the provisions of subdivision (b)(1), (2), (3), (4), or (5) and the custody of that juvenile is subject to the prior or continuing order of another court of record of this state, the manner of notice to the other court of record and the authority of the court to proceed is governed by rule of the supreme court.

MCLS § 712A.19 (2009)

Termination of cause; supplemental order of disposition, review hearing, notice of review hearing; factors to be reviewed; modification of plan, determination as to placement; order; determination as to review; issuance of order without hearing, access to agency report, agency report and other information as evidence; concurrent efforts to reunify child with family

Sec. 19 (1) Subject to section 20 of this chapter, if a child remains under the court's jurisdiction, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court in section 18 of this chapter, at any time as the court considers necessary and proper. An amended or supplemented order shall be referred to as a "supplemental order of disposition". If the agency becomes aware of additional abuse or neglect of a child who is under the court's jurisdiction and if that abuse or neglect is substantiated as provided in the child protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency shall file a supplemental petition with the court.

(2) Except as provided in subsections (3) and (4), if a child subject to the court's jurisdiction remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the court's jurisdiction After the first year that the child is subject to the court's jurisdiction, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preced-

ing review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(3) Except as otherwise provided in subsection (4), if, in a proceeding under section 2(b) of this chapter, a child is subject to the court's jurisdiction and removed from his or her home, a review hearing shall be held not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the court's jurisdiction . After the first year that the child has been removed from his or her home and is subject to the court's jurisdiction , a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter.

(4) If a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, the court shall

hold a review hearing not more than 182 days after the child has been removed from his or her home and no later than every 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan children's institute, or other agency A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon the motion of any party or at the court's discretion, a review hearing may be accelerated to review any element of the case service plan.

(5) Written notice of a review hearing under subsection (2), (3), or (4) shall be served upon all of the following.

(a) The agency The agency shall advise the child of the hearing if the child is 11 years of age or older

(b) The child's foster parent or custodian .

(c) If the parental rights to the child have not been terminated, the child's parents.

(d) If the child has a guardian, the guardian for the child

(e) If the child has a guardian ad litem, the guardian ad litem for the child.

(f) A nonparent adult if the nonparent adult is required to comply with the case service plan.

(g) If tribal affiliation has been determined, the elected leader of the Indian tribe

(h) The attorney for the child, the attorneys for each party, and the prosecuting attorney if the prosecuting attorney has appeared in the case

(i) If the child is 11 years of age or older, the child.

(j) Other persons as the court may direct.

(6) At a review hearing under subsection (2), (3), or (4), the court shall review on the record all of the following:

(a) Compliance with the case service plan with respect to services provided or offered to the child and the child's parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan and whether the parent, guardian, custodian, or nonparent adult if the nonparent adult is required to comply with the case service plan has complied with and benefited from those services.

(b) Compliance with the case service plan with respect to parenting time with the child. If parenting time did not occur or was infrequent, the court shall determine why parenting time did not occur or was infrequent

(c) The extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency.

(d) Likely harm to the child if the child continues to be separated from the child's parent, guardian, or custodian.

(e) Likely harm to the child if the child is returned to the child's parent, guardian, or custodian.

(7) After review of the case service plan, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in foster care or that caused the child to remain in foster care. The court may modify any part of the case service plan including, but not limited to, the following

(a) Prescribing additional services that are necessary to rectify the conditions that caused the child to be placed in foster care or to remain in foster care

(b) Prescribing additional actions to be taken by the parent, guardian, nonparent adult, or custodian, to rectify the conditions that caused the child to be placed in foster care or to remain in foster care

(8) At a review hearing under subsection (2), (3), or (4), the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order

(9) If in a proceeding under section 2(b) of this chapter a child is placed in foster care, the court shall determine at the dispositional hearing and each review hearing whether the cause should be reviewed before the next review hearing required by subsection (2), (3), or (4). In making this determination, the court shall consider at least all of the following.

(a) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.

(b) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required by subsection (2), (3), or (4).

(10) Unless waived, if not less than 7 days' notice is given to all parties prior to the return of a child to the child's home, and no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child to the child's home.

(11) An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom a child is placed, attorney, lawyer-guardian ad litem, or guardian ad litem, in addition to any other evi-

dence, including the appropriateness of parenting time, offered at the hearing.

(12) Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child with the family

(13) Reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-state or out-of-state options, may be made concurrently with reasonable efforts to reunify the child and family.

MI Rules MCR 3.943

Rule 3.943 Dispositional Hearing

(A) General. A dispositional hearing is conducted to determine what measures the court will take with respect to a juvenile and, when applicable, any other person, once the court has determined following trial or plea that the juvenile has committed an offense.

(B) Time. The interval between the plea of admission or trial and disposition, if any, is within the court's discretion When the juvenile is detained, the interval may not be more than 35 days, except for good cause.

(C) Evidence.

(1) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply at dispositional hearings. All relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of

its probative value, even though such evidence may not be admissible at trial.

(2) The juvenile, or the juvenile's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when those individuals are reasonably available

(3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at a dispositional hearing, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment

(D) Presence of Juvenile and Victim.

(1) The juvenile may be excused from part of the dispositional hearing for good cause shown, but must be present when the disposition is announced.

(2) The victim has the right to be present at the dispositional hearing and to make an impact statement as provided by the Crime Victim's Rights Act, MCL 780.751 *et seq*

(E) Dispositions.

(1) If the juvenile has been found to have committed an offense, the court may enter an order of disposition as provided by MCL 712A.18

(2) In making second and subsequent dispositions in delinquency cases, the court must consider imposing increasingly severe sanctions, which may include imposing additional conditions of probation, extend-

ing the term of probation; imposing additional costs, ordering a juvenile who has been residing at home into an out-of-home placement, ordering a more restrictive placement; ordering state wardship for a child who has not previously been a state ward; or any other conditions deemed appropriate by the court Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for the purpose of this rule

(3) Before a juvenile is placed in an institution outside the state of Michigan as a disposition, the court must find that:

(a) institutional care is in the best interests of the juvenile,

(b) equivalent facilities to meet the juvenile's needs are not available within Michigan, and

(c) the placement will not cause undue hardship

(4) The court shall not enter an order of disposition for a juvenile offense until the court verifies that the juvenile has been fingerprinted If the juvenile has not been fingerprinted, the court shall proceed as provided by MCR 3 936

(5) If the court enters an order pursuant to the Crime Victim's Rights Act, MCL 780.751 *et seq.*, the court shall only order the payment of one assessment at any dispositional hearing, regardless of the number of offenses.

(6) The court shall prepare and forward to the Secretary of State an abstract of its findings at such times and for such offenses as are required by law.

(7) Mandatory Detention for Use of a Firearm

(a) In addition to any other disposition, a juvenile, other than a juvenile sentenced in the same manner as an adult under MCL 712A.18(1)(n), shall be committed under MCL 712A.18(1)(e) to a detention facility for a specified period of time if all the following circumstances exist:

(i) the juvenile is under the jurisdiction of the court under MCL 712A.2(a)(1),

(ii) the juvenile was found to have violated a law of this state or of the United States or a criminal municipal ordinance, and

(iii) the juvenile was found to have used a firearm during the offense.

(b) The length of the commitment to a detention facility shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.

(c) "Firearm" means any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion, except any smoothbore rifle or hand gun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas, or air

MI Rules MCR 3.945

Rule 3.945 Dispositional Review

(A) Dispositional Review Hearings.

(1) *Generally*. The court must conduct periodic hearings to review the dispositional orders in delinquency cases in which the juvenile has been placed outside the home. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party or by a probation officer or caseworker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a dispositional review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A 18a or as otherwise permitted by law The Michigan Rules of Evidence, other than those with respect to privileges, do not apply

(2) *Required Review Hearings*.

(a) If the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A 19(2)

(b) A review hearing is required before a juvenile is moved to a more physically restrictive type of placement, unless the court in its dispositional order has provided for a more physically restrictive type of placement A review hearing is not required if the juvenile and a parent consent to the new placement in a writing filed with the court. A juvenile, who has been ordered placed in a juvenile facility, may be released only with the approval of the court

(B) Hearing to Extend Jurisdiction.

(1) *When Required.* When a juvenile committed under MCL 712A.18(1)(e) for an offense specified in MCL 712A.18d remains under court jurisdiction after the juvenile's 18th birthday, the court must conduct a hearing to determine whether to extend the court's jurisdiction to age 21, pursuant to MCL 712A.18d.

(a) Time of Hearing. Unless adjourned for good cause, a commitment review hearing must be held as nearly as possible to, but before, the juvenile's 19th birthday.

(b) Notice of Hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and if the address or whereabouts are known, the parent, guardian or legal custodian of the juvenile, at least 14 days before the hearing. The notice must clearly indicate that the court may extend jurisdiction over the juvenile until the juvenile reaches 21 years of age and must include advice to the juvenile and the parent, guardian, or legal custodian that the juvenile has the right to an attorney

(2) *Appointment of Attorney*. The court must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained.

(3) *Evidence; Commitment Report* The Michigan Rules of Evidence do not apply, other than those with respect to privileges. The institution, agency, or facility must prepare a report for use at the hearing

to extend jurisdiction The report must contain information required by MCL 803.225. The court must consider this information in determining whether to extend jurisdiction beyond the age of 19

(4) *Burden of Proof; Findings.* The court must extend jurisdiction over the juvenile until the age of 21, unless the juvenile proves by a preponderance of the evidence that the juvenile has been rehabilitated and does not present a serious risk to public safety. In making the determination, the court must consider the following factors:

(a) the extent and nature of the juvenile's participation in education, counseling, or work programs;

(b) the juvenile's willingness to accept responsibility for prior behavior,

(c) the juvenile's behavior in the current placement;

(d) the juvenile's prior record, character, and physical and mental maturity;

(e) the juvenile's potential for violent conduct, as demonstrated by prior behavior;

(f) the recommendations of the institution, agency, or facility charged with the juvenile's care regarding the appropriateness of the juvenile's release or continued custody; and

(g) any other information the prosecuting attorney or the juvenile submits

(C) Review of Extended Jurisdiction Cases.

(1) *Out-of-Home Care* If the juvenile is placed outside the home, the court must hold a dispositional

review hearing no later than every 182 days after the hearing to extend jurisdiction

(2) *Periodic Review.* If the institution, agency, or facility to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency, or facility may petition the court to conduct a review hearing at any time before the juvenile becomes 21 years of age.

(D) Juvenile on Conditional Release. The procedures set forth in MCR 3.944 apply to juveniles committed under MCL 712A.18 who have allegedly violated a condition of release after being returned to the community on release from a public institution. The court need not conduct such a hearing when there will be an administrative hearing by the agency to which the juvenile is committed, provided the court has not retained jurisdiction.

MI Rules MCR 3.965

Rule 3 965 Preliminary Hearing

(A) Time for Preliminary Hearing.

(1) *Child in Protective Custody.* The preliminary hearing must commence no later than 24 hours after the child has been taken into protective custody, excluding Sundays and holidays, as defined by MCR 8 110(D)(2), unless adjourned for good cause shown, or the child must be released.

(2) *Severely Physically Injured or Sexually Abused Child* When the Family Independence Agency sub-

mits a petition in cases in which the child has been severely physically injured, as that term is defined in MCL 722 628(3)(c), or sexually abused, and subrule (A)(1) does not apply, the preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

(B) Procedure.

(1) The court must determine if the parent, guardian, or legal custodian has been notified, and if the lawyer-guardian ad litem for the child is present. The preliminary hearing may be adjourned for the purpose of securing the appearance of an attorney, parent, guardian, or legal custodian or may be conducted in the absence of the parent, guardian, or legal custodian if notice has been given or if the court finds that a reasonable attempt to give notice was made

(2) The child's lawyer-guardian ad litem must be present to represent the child at the preliminary hearing The court may make temporary orders for the protection of the child pending the appearance of an attorney or pending the completion of the preliminary hearing The court must direct that the lawyer-guardian ad litem for the child receive a copy of the petition.

(3) If the respondent is present, the court must assure that the respondent has a copy of the petition. The court must read the allegations in the petition in open court, unless waived.

(4) The court shall determine if the petition should be dismissed or the matter referred to alternate ser-

vices. If the court so determines the court must release the child. Otherwise, the court must continue the hearing

(5) The court must advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 3.915(B)(1)(a)

(6) The court must advise the respondent of the right to trial on the allegations in the petition and that the trial may be before a referee unless a demand for a jury or judge is filed pursuant to MCR 3.911 or 3 912

(7) The court shall allow the respondent an opportunity to deny or admit the allegations and make a statement of explanation.

(8) The court must inquire whether the child is subject to the continuing jurisdiction of another court and, if so, which court.

(9) The court must inquire if the child or either parent is a member of any American Indian tribe or band If the child is a member, or if a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe, notify the tribe or band, and follow the procedures set forth in MCR 3.980.

(10) The court may adjourn the hearing for up to 14 days to secure the attendance of witnesses or for other good cause shown If the preliminary hearing is adjourned, the court may make temporary orders for the placement of the child when necessary to assure the immediate safety of the child, pending the

completion of the preliminary hearing and subject to subrules (C) and (D).

(11) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial. The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A 2(b). The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent that such privileges are abrogated by MCL 722 631

(12) If the court authorizes the filing of the petition, the court:
(a) may release the child to a parent, guardian, or legal custodian and may order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child; or

(b) may order placement of the child after making the determinations specified in subrules (C) and (D), if those determinations have not previously been made.

(13) The court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care If the father of the child has not been identified, the court must inquire of the mother regarding the identity and whereabouts of the father

(C) Pretrial Placement; Contrary to the Welfare Determination.

(1) *Placement; Proofs.* If the child was not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in subrule 3.965(C)(2) are present. The respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proofs to counter the admitted evidence

(2) *Criteria.* If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child's needs

(3) *Findings* If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home and the reasons supporting that finding If the "contrary to the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be made on the basis of hearsay evidence that possesses adequate indicia of trustworthiness.

(4) *Record Checks, Home Study* If the child has been placed in a relative's home,

(a) the court may order the Family Independence Agency to report the results of a criminal record check and central registry clearance of the residents

of the home to the court before, or within 7 days after, the placement, and

(b) the court must order the Family Independence Agency to perform a home study with a copy to be submitted to the court not more than 30 days after the placement.

(5) *No Right to Bail.* No one has the right to post bail in a protective proceeding for the release of a child in the custody of the court.

(6) *Parenting Time or Visitation.*

(a) Unless the court suspends parenting time pursuant to MCL 712A 19b(4), or unless the child has a guardian or legal custodian, the court must permit each parent frequent parenting time with a child in placement unless parenting time, even if supervised, may be harmful to the child.

(b) If the child was living with a guardian or legal custodian, the court must determine what, if any, visitation will be permitted with the guardian or legal custodian

(7) *Medical Information.* Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include:

(a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records.

(D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court

(1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required. The court must make this determination at the earliest possible time, but no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

(2) Reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that

(a) the parent has subjected the child to aggravated circumstances as listed in sections 18(1) and (2) of the Child Protection Law, MCL 722.638 (1) and (2) ; or

(b) the parent has been convicted of 1 or more of the following:

(i) murder of another child of the parent,

(ii) voluntary manslaughter of another child of the parent,

(iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or

(c) parental rights of the parent with respect to a sibling have been terminated involuntarily.

(E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties

(1) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days after the placement,

(2) that participation in the initial service plan is voluntary unless otherwise ordered by the court,

(3) that the general elements of an initial service plan include:

(a) the background of the child and the family,

(b) an evaluation of the experiences and problems of the child,

(c) a projection of the expected length of stay in foster care, and

(d) an identification of specific goals and projected time frames for meeting the goals;

(4) that, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child; and

(5) that the case may be reviewed for concurrent planning.

The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests, as required by MCL 722.954a(2) In a case to which MCL 712A 18f(6) applies, the court shall require the agency to provide the name and address of the child's attending physician of record or primary care physician.

MI Rules MCR 3.971

Rule 3.971 Pleas Of Admission Or No Contest

(A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

(B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file·

(1) of the allegations in the petition;

(2) of the right to an attorney, if respondent is without an attorney;

(3) that, if the court accepts the plea, the respondent will give up the rights to

(a) trial by a judge or trial by a jury,

(b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,

(c) have witnesses against the respondent appear and testify under oath at the trial,

(d) cross-examine witnesses, and

(e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;

(4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

(C) Voluntary, Accurate Plea.

(1) *Voluntary Plea*. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made

(2) *Accurate Plea* The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory

grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

MI Rules MCR 3.973

Rule 3.973 Dispositional Hearing

(A) Purpose. A dispositional hearing is conducted to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true.

(B) Notice. Unless the dispositional hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920

(C) Time. The interval, if any, between the trial and the dispositional hearing is within the discretion of the court When the child is in placement, the interval may not be more than 28 days, except for good cause

(D) Presence of Parties.

(1) The child may be excused from the dispositional hearing as the interests of the child require

(2) The respondent has the right to be present or may appear through an attorney

(3) The court may proceed in the absence of parties provided that proper notice has been given.

(E) Evidence; Reports.

(1) The Michigan Rules of Evidence do not apply at the initial dispositional hearing, other than those with respect to privileges. However, as provided by MCL 722 631, no assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(2) All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value. The court shall consider the case service plan and any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom the child is placed. If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, guardian, or legal custodian, the agency shall report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home.

(3) The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making

the reports when those individuals are reasonably available.

(4) Written reports, other than those portions made confidential by law, case service plans, and court orders, including all updates and revisions, shall be available to the foster parent, child caring institution, or relative with whom the child is placed. The foster parents, child caring institution, or relative with whom the child is placed shall not have the right to cross-examine individuals making such reports or the right to controvert such reports beyond the making of a written or oral statement concerning the child as provided in subrule (E)(2).

(F) Dispositional Orders.

(1) The court shall enter an order of disposition as provided in the Juvenile Code and these rules

(2) The court shall not enter an order of disposition until it has examined the case service plan as provided in MCL 712A 18f. The court may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child

(3) The court, on consideration of the written report prepared by the agency responsible for the care and supervision of the child pursuant to MCL 712A 18f(1), shall, when appropriate, include a statement in the order of disposition as to whether reasonable efforts were made.

(a) to prevent the child's removal from home, or

(b) to rectify the conditions that caused the child to be removed from the child's home

(4) *Medical Information.* Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include the following

(a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records.

(5) *Child Support.* The court may include an order requiring one or both of the child's parents to pay child support. All child support orders entered under this subrule must comply with MCL 552 605 and MCR 3.211(D).

(G) Subsequent Review. When the court does not terminate jurisdiction upon entering its dispositional order, it must:

(1) follow the review procedures in MCR 3.975 for a child in placement, or

(2) review the progress of a child at home pursuant to the procedures of MCR 3.974(A)

(H) Allegations of Additional Abuse or Neglect.

(1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional child abuse or child neglect, as de-

fined in MCL 722.622(f) and (j), of a child who is under the jurisdiction of the court are governed by MCR 3 977.

(2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional child abuse or child neglect, as defined in MCL 722 622(f) and (j), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.

MI Rules MCR 3.974

Rule 3.974 Post-Dispositional Procedures: Child At Home

(A) Review of Child's Progress.

(1) *General* The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction

(2) *Time* If the child was never removed from the home, the progress of the child must be reviewed no later than 182 days from the date the petition was filed and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court After that first year, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding hearing until the court terminates its jurisdiction. The review shall occur no later than 182 days after the child returns home when the

child is no longer in foster care If the child was removed from the home and subsequently returned home, review hearings shall be held in accordance with MCR 3 975.

(3) *Change of Placement* Except as provided in subrule (B), the court may not order a change in the placement of a child solely on the basis of a progress review. If the child over whom the court has retained jurisdiction remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court must conduct a hearing before it may order the placement of the child. Such a hearing must be conducted in the manner provided in MCR 3.975(E)

(B) Emergency Removal.

(1) *General*. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order temporary removal of the child to protect the health, safety, or welfare of the child, pending an emergency removal hearing.

(2) *Notice*. The court shall ensure that the parties are given notice of the hearing as provided in MCR 3.920 and MCR 3.921

(3) *Emergency Removal Hearing*. If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8 110(D)(2)

Unless the child is returned to the parent pending the dispositional review, the court must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied

(a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights:

(i) to be represented by an attorney at the dispositional review hearing;

(ii) to contest the continuing placement at the dispositional review hearing within 14 days; and

(iii) to use compulsory process to obtain witnesses for the dispositional review hearing

(b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.

(C) Dispositional Review Hearing; Procedure. If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown The hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.

MI Rules MCR 3.975

Rule 3 975 Postdispositional Procedures Child In Foster Care

(A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A 18f and court evaluation of the continued need and appropriateness for the child to be in foster care

(B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(C) Time. The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:

(1) not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home and is subject to the jurisdiction of the court, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every

182 days from each preceding review hearing thereafter until the case is dismissed; or

(2) if a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, not more than 182 days after the child has been removed from his or her home and no later than 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency as provided in MCR 3.976(E)(3).

A review hearing under this subrule shall not be canceled or delayed beyond the number of days required in this subrule, regardless of whether a petition to terminate parental rights or another matter is pending.

(D) Early Review Option. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (C). In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

(1) the ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;

(2) the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing

(E) Procedure. Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing The report of the agency that is filed with the court must be accessible to the parties and offered into evidence The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

(F) Criteria.

(1) *Review of Case Service Plan*. The court, in reviewing the progress toward compliance with the case service plan, must consider:

(a) the services provided or offered to the child and parent, guardian, or legal custodian of the child,

(b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;

(c) the extent of parenting time or visitation, including a determination regarding the reasons either was not frequent or never occurred,

(d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;

(e) any likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and

(f) any likely harm to the child if the child is returned to the parent, guardian, or legal custodian.

(2) *Progress Toward Returning Child Home.* The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care. The court shall also review the concurrent plan, if applicable

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

(1) order the return of the child home,

(2) change the placement of the child,

(3) modify the dispositional order,

(4) modify any part of the case service plan,

(5) enter a new dispositional order, or

(6) continue the prior dispositional order.

(H) Returning Child Home Without Dispositional Review Hearing. Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home

MI Rules MCR 3.976

Rule 3.976 Permanency Planning Hearings

(A) Permanency Plan. At or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when.

(1) the child may be returned to the parent, guardian, or legal custodian;

(2) a petition to terminate parental rights should be filed;

(3) the child may be placed in a legal guardianship;

(4) the child may be permanently placed with a fit and willing relative, or

(5) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (1)-(4)

(B) Time.

(1) An initial permanency planning hearing must be held within 28 days after a judicial determination that reasonable efforts to reunite the family or to prevent removal are not required given one of the following circumstances:

(a) There has been a judicial determination that the child's parent has subjected the child to aggravated circumstances as listed in sections 18(1) and (2) of the Child Protection Law, 1975 PA 238, MCL 722 638.

(b) The parent has been convicted of one or more of the following:

(i) murder of another child of the parent,

(ii) voluntary manslaughter of another child of the parent,

(iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to one of the child's siblings involuntarily terminated.

(2) If subrule (1) does not apply, the court must conduct an initial permanency planning hearing no later than 12 months after the child's removal from the home, regardless of whether any supplemental petitions are pending in the case

(3) *Requirement of Annual Permanency Planning Hearings.* During the continuation of foster care, the court must hold permanency planning hearings beginning no later than 12 months after the initial permanency planning hearing The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances

of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a review hearing.

(4) The judicial determination to finalize the court-approved permanency plan must be made within the time limits prescribed in subsections (1)-(3)

(C) Notice. The parties entitled to participate in a permanency planning hearing include the parents of the child, if the parent's parental rights have not been terminated, the child, if the child is of an appropriate age to participate, foster parents, preadoptive parents, and relative caregivers. Written notice of a permanency planning hearing must be given as provided in MCR 3 920 and MCR 3 921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties

(D) Hearing Procedure; Evidence.

(1) *Procedure.* Each permanency planning hearing must be conducted by a judge or a referee Paper reviews, ex parte hearings, stipulated orders, or other actions that are not open to the participation of (a) the parents of the child, unless parental rights have been terminated, (b) the child, if of appropriate age, and (c) foster parents or preadoptive parents, if any, are not permanency planning hearings

(2) *Evidence.* The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722 631 At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing The court shall obtain the child's views regarding the permanency plan in a manner appropriate to the child's age The parties must be afforded an opportunity to examine and controvert written reports received by the court and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(E) Determinations; Permanency Options.

(1) In the case of a child who will not be returned home, the court shall consider in-state and out-of-state placement options. In the case of a child placed out of state, the court shall determine whether the out-of-state placement continues to be appropriate and in the child's best interests. The court shall ensure that the agency is providing appropriate services to assist a child who will transition from foster care to independent living.

(2) *Determining Whether to Return Child Home* At the conclusion of a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substan-

tial risk of harm to the life, the physical health, or the mental well-being of the child. Failure to substantially comply with the case service plan is evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(3) *Continuing Foster Care Pending Determination on Termination of Parental Rights* If the court determines at a permanency planning hearing that the child should not be returned home, it may order the agency to initiate proceedings to terminate parental rights. Except as otherwise provided in this subsection, if the child has been in foster care under the responsibility of the state for 15 of the most recent 22 months, the court shall order the agency to initiate proceedings to terminate parental rights If the court orders the agency to initiate proceedings to terminate parental rights, the order must specify the date, or the time within which the petition must be filed In either case, the petition must be filed no later than 28 days after the date the permanency planning hearing is concluded The court is not required to order the agency to initiate proceedings to terminate parental rights if one or more of the following apply:

(a) The child is being cared for by relatives

(b) The case service plan documents a compelling reason for determining that filing a petition to terminate parental rights would not be in the best in-

terests of the child. A compelling reason not to file a petition to terminate parental rights includes, but is not limited to, any of the following:

(i) Adoption is not the appropriate permanency goal for the child.

(ii) No grounds to file a petition to terminate parental rights exist.

(iii) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111.

(iv) There are international legal obligations or compelling foreign policy reasons that preclude terminating parental rights.

(c) The state has not provided the child's family, during the period set in the case service plan, with the services the state considers necessary for the child's safe return to his or her home, if reasonable efforts to reunify the family are required.

(4) *Other Permanency Plans.* If the court does not return the child to the parent, guardian, or legal custodian, and if the agency demonstrates that termination of parental rights is not in the best interests of the child, the court may

(a) continue the placement of the child in foster care for a limited period to be set by the court while the agency continues to make reasonable efforts to finalize the court-approved permanency plan for the child,

(b) place the child with a fit and willing relative,

(c) upon a showing of compelling reasons, place the child in an alternative planned permanent living arrangement, or

(d) appoint a juvenile guardian for the child pursuant to MCL 712A.19a and MCR 3.979.

The court must articulate the factual basis for its determination in the court order adopting the permanency plan.

MI Rules MCR 3.977

Rule 3.977 Termination Of Parental Rights

(A) General.

(1) This rule applies to all proceedings in which termination of parental rights is sought. Proceedings for termination of parental rights involving an Indian child, as defined by 25 USC 1901 *et seq* , are governed by MCR 3.980 in addition to this rule.

(2) Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition by:

(a) the agency,

(b) the child,

(c) the guardian, legal custodian, or representative of the child,

(d) a concerned person as defined in MCL 712A 19b(6),

(e) the state children's ombudsman, or

(f) the prosecuting attorney, without regard to whether the prosecuting attorney is representing or acting as a legal consultant to the agency or any other party.

(3) The burden of proof is on the party seeking by court order to terminate the rights of the respondent over the child. There is no right to a jury determination.

(B) Definition. When used in this rule, unless the context otherwise indicates, "respondent" includes

(1) the natural or adoptive mother of the child;

(2) the father of the child as defined by MCR 3.903(A)(7)

"Respondent" does not include other persons to whom legal custody has been given by court order, persons who are acting in the place of the mother or father, or other persons responsible for the control, care, and welfare of the child.

(C) Notice; Priority.

(1) Notice must be given as provided in MCR 3 920 and MCR 3 921(B)(3).

(2) Hearings on petitions seeking termination of parental rights shall be given the highest possible

priority consistent with the orderly conduct of the court's caseload.

(D) Suspension of Parenting Time. If a petition to terminate parental rights to a child is filed, the court may suspend parenting time for a parent who is a subject of the petition.

(E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3 973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

(1) the original, or amended, petition contains a request for termination;

(2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A 2(b) have been established,

(3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition·

(a) are true, and

(b) establish grounds for termination of parental rights under MCL 712A 19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (*l*), (m), or (n);

(4) termination of parental rights is in the child's best interests

(F) Termination of Parental Rights on the Basis of Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction

(1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must not be made, if

(a) the supplemental petition for termination of parental rights contains a request for termination;

(b) at the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:

(i) are true, and

(ii) come within MCL 712A 19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (*l*), (m), or (n), and

(c) termination of parental rights is in the child's best interests.

(2) *Time for Hearing on Petition.* The hearing on a supplemental petition for termination of parental rights under this subrule shall be held within 42 days after the filing of the supplemental petition

The court may, for good cause shown, extend the period for an additional 21 days.

(G) Termination of Parental Rights; Other. If the parental rights of a respondent over the child were not terminated pursuant to subrule (E) at the initial dispositional hearing or pursuant to subrule (F) at a hearing on a supplemental petition on the basis of different circumstances, and the child is within the jurisdiction of the court, the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 3.975, a progress review under MCR 3 974, or a permanency planning hearing under MCR 3 976, take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3).

(1) *Time*

(a) Filing Petition. The supplemental petition for termination of parental rights may be filed at any time after the initial dispositional review hearing, progress review, or permanency planning hearing, whichever occurs first

(b) Hearing on Petition The hearing on a supplemental petition for termination of parental rights under this subrule must be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days

(2) *Evidence.* The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by

MCL 722 631. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties must be afforded an opportunity to examine and controvert written reports received by the court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) *Order.* The court must order termination of the parental rights of a respondent and must order that additional efforts for reunification of the child with the respondent must not be made, if the court finds

(a) on the basis of clear and convincing evidence admitted pursuant to subrule (G)(2) that one or more facts alleged in the petition:

(i) are true, and

(ii) come within MCL 712A 19b(3)

(b) that termination of parental rights is in the child's best interests

(H) Findings.

(1) *General* The court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient. If the court does not issue a decision on the record following hearing, it shall file its decision within 28 days after the taking of final proofs, but no later than 70 days after the commencement of the hearing to terminate parental rights

(2) *Denial of Termination.* If the court finds that the parental rights of respondent should not be terminated, the court must make findings of fact and conclusions of law.

(3) *Order of Termination* An order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order

(I) Respondent's Rights Following Termination.

(1) *Advice.* Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that·

(a) The respondent is entitled to appellate review of the order.

(b) If the respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.

(c) A request for the assistance of an attorney must be made within 14 days after notice of the order is given or an order is entered denying a timely filed postjudgment motion The court must then give a form to the respondent with the instructions (to be repeated on the form) that if the respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form)

(d) The respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710 27.

(2) *Appointment of Attorney.*

(a) If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall appoint an attorney within 14 days after the respondent's request is filed The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.

(b) In a case involving the termination of parental rights, the order described in (I)(2) and (3) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7 204

(3) *Transcripts*. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense

(J) Review Standard. The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights.